

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, January 12, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------------------|--------------------------------|--------------------|
| Information: | Introductions and Organization | Chairman Pearce |
| Rules: | Assignment of Rules | Vice Chairman Bair |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Monty Pearce

Vice Chair Steve Bair

Sen Dean Cameron

Sen Robert Geddes

Sen Jeff Siddoway

Sen Bert Brackett

Sen Lee Heider

Sen Elliot Werk

Sen Michelle Stennett

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: (208) 332-1323

email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 12, 2011

TIME: 1:30 P.M.

PLACE: WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Geddes, Siddoway, Brackett, Heider, Werk, Stennett

**ABSENT/
EXCUSED:**

WELCOME: The meeting was called to order at 1:30 p.m. by **Chairman Pearce**. He welcomed the audience, as well as the Committee members and staff.

INTRODUCTIONS: **The Chairman** then asked each of the members to introduce themselves, provide background information, and to explain why they chose to be on the Resources & Environment Committee.

RULES: **Chairman Pearce** turned the meeting over to **Vice Chairman Bair**, Rules Chairman, who explained the procedure for "Rules Review", and assigned specific Rules to the Committee members. He announced that the hearing for the Fish and Game Commission's Rules will be Monday, January 17. Vice Chairman Bair thanked the Fish and Game personnel in the audience for being willing to work on a holiday. Other agencies' Rules will be heard later in the week, as dates have yet to be confirmed. He then turned the meeting back to the Chairman.

ISSUES TO BE ADDRESSED: **Chairman Pearce** listed some issues facing the Committee this session. They are as follows:
Natural Gas (drilling has begun in his district);
Water quality (hydraulic fracturing);
Mining;
Gubernatorial appointments.

He requested that members provide him with input and/or suggestions.

Senator Brackett asked that El Paso Gas Company update the Committee on their activities, as they are installing lines from Wyoming to Oregon. He understands the environmental groups receiving the settlement money can spend the money in adjacent counties and he is interested in learning more about it.

ADJOURN: With no further business to come before the Committee, **the Chairman** adjourned the meeting at 1:53 p.m.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
 1:30 P.M.
 Room WW55
 Monday, January 17, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|---|---|
| RS20093 | Relating to motorized vehicles | Sen. Corder |
| RS20094 | Relating to Fish & Game Commission and promulgation of rules | Sen. Corder |
| | PENDING RULES — IDFG Commission | |
| Docket No. 13-0102-1001 | Rules Governing Public Safety | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0104-1001 | Rules Governing Licensing | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0104-1002 | Rules Governing Licensing | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0106-1001 | Rules Governing Classification and Protection of Wildlife | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0108-1001 | Rules Governing the Taking of Big Game Animals in the State of Idaho | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0109-1001 | Rules Governing the Taking of Game Birds in the State of Idaho | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0109-1002 | Rules Governing the Taking of Game Birds in the State of Idaho | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0110-1001 | Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |
| Docket No. 13-0116-1001 | The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals | Sharon Kiefer, Lance Hebdon, Dallas Burkhalter, Idaho Fish & Game |

Docket No. The Trapping of Predatory and Unprotected
13-0116-1002 Wildlife and the Taking of Furbearing Animals

Sharon Kiefer, Lance
Hebdon, Dallas
Burkhalter, Idaho
Fish & Game

Docket No. Rules Governing the Use of Bait for Taking Big
13-0117-1001 Game Animals

Sharon Kiefer, Lance
Hebdon, Dallas
Burkhalter, Idaho
Fish & Game

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Geddes
Sen Siddoway
Sen Brackett
Sen Heider
Sen Werk
Sen Stennett

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MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Geddes, Siddoway, Brackett, Heider, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:35 p.m. He apologized for his tardiness, as it was due to another commitment.

MOTION: **Senator Brackett** made the **motion** to approve the minutes of January 12, 2011, with one correction, and that was the El Paso gas line does not go through Idaho. It goes from Wyoming to Oregon, with some Idaho counties bordering the gas line. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

RS 20093 & RS 20094: **Senator Corder** said that he would speak to both RS's, then if there are specific questions to an RS, he would address it. The Mountain Home ATV Club, in coordination with clubs throughout the state, asked that these issues be brought before the Committee. A draft was sent to IDFG for review and some changes/corrections were made. However, some philosophical differences remain. The IDFG feels that these issues belong to the Commission. Senator Corder stated that he feels it should be resolved by the legislature.

RS 20093 is an amendment to Idaho Code, Section 36–1101, that means that motorized vehicles may be used for transportation when not in violation of other provisions of Chapter 11.

RS 20094 is an amendment to Idaho Code, Section 36–104, that means that IDFG and the Commission may not promulgate rules prohibiting motorized vehicle usage on lands not owned or leased by the Department. Neither shall rules be promulgated that define motorized vehicles as a “method of take” or “aid to hunting”. The Department and Commission are not prohibited from regulating hunting from motorized vehicles or taking enforcement actions against unlawful taking of game.

MOTION: **Vice Chairman Bair** made a **motion** to send **RS 20093 and RS 20094 to print**. The motion was **seconded** by **Senator Geddes**. The motion **passed** by unanimous voice vote.

ANNOUNCEMENTS: **Chairman Pearce** said there are some letters in the Committee's folders that should be reviewed. One is regarding a boat dock at Coeur d'Alene, which will be addressed by the Parks and Recreation Department, after they present their Rules Wednesday. The other letter pertains to trapping, which will be discussed today, when the corresponding rule is reviewed by IDFG.

The meeting was then turned over to **Vice Chairman Bair, Rules Chairman**. He indicated that voting on most of the rules will not be held until all rules are heard and the Committee has had a chance to thoroughly review them. He then welcomed **Ms. Sharon Kiefer, IDFG Assistant Director of Policy**, and **Mr. Dallas Burkhalter, Deputy Attorney General** for IDFG. They will present the pending rules of the Fish and Game Commission.

**Docket No.
13-0102-1001**

Ms. Kiefer said this is a rule that governs public safety and implements Senate bill 1283 which allows hunter education certification from other countries, which meets or exceeds Idaho's standards. There is an international hunter education association which provides assistance in terms of assessing foreign countries' programs. When asked about providing proof, Ms. Kiefer said that a hunter's certification card, or a document that certified that a hunter's education program had been completed, would be proof. The Department provides vendors with a protocol for acceptance, but encourages vendors to send foreign individuals to regional offices or call headquarters direct.

**Docket No.
13-0104-1001**

This rule governs licensing and implements rule changes to the Landowner Appreciation Program (LAP) recommended by the Fish and Game Advisory Committee and the Idaho Sportsmen Caucus Advisory Council. It also redefines eligibility requirements for the LAP, and restricts commercialization of LAP tags. Some of the key changes are (1) change of wordage from LAP permits to LAP tags; (2) amendment of the definition of a landowner — individual with 50% or more control of the parcel (640 acres); (3) pathway for owners with smaller parcels (320 acres); (4) opportunity for all landowners in a drawing to draw one tag before a landowner can draw a second tag; and (5) clarified verbiage from "permit" to "tag". **Ms. Kiefer** also noted that LAP controlled hunt tags shall not be sold or marketed. **Senator Siddoway** requested the information provided by the Fish and Game Advisory Committee regarding the LAP rule recommendation. Also requested was the summary of the public input scoping survey.

**Docket No.
13-0104-1002**

This rule also governs licensing. It updates rules to reflect previous legislative action, (Senate bill 1141a, 2009), and Commission actions, including the elimination of controlled hunt permits, adjustments in elk zone tag quotas, and allowance for rain checks. These updates are primarily administrative issues. **Vice Chairman Bair** inquired as to how the elk zone tag quotas by proclamation are administered. **Ms. Kiefer** replied that the Commission sets the proclamations at the biological end of the business, so when they are establishing numbers of animals that can be hunted, opening and closing of seasons, and all the things that go along with establishing a hunt, it is the biological information that is the basis of the Commission's setting the seasons. The Commission has the statutory authority to establish the proclamation, rather than via a rule. The proclamation is in effect as long as it is within the season, but does not have the permanence of rules. Also addressing this issue was **Mr. Burkhalter**. **Senator Cameron** inquired as to how much in advance is the Department making those determinations. **Ms. Kiefer** replied that they are working on it at the present time and will establish more information this Spring. The Department deals with short, compressed timelines.

**Docket No.
13-0106-1001**

This rule governs classification and protection of wildlife and implements Senate bill 1266 which classifies raccoons as predatory wildlife, and corrects a statutory reference. **Ms. Kiefer** stated that this docket implements Senate bill 1266 which passed the 2010 Legislature. They were formerly classified as a fur bearer.

MOTION:

Senator Stennett moved, seconded by **Senator Siddoway**, that the Committee adopt Docket No. 13-0106-1001. The motion **passed** by unanimous voice vote.

Docket No. 13–0108–1001 **Ms. Kiefer** presented this rule and it governs the taking of big game animals in the State of Idaho. Two bills were passed in 2010 that are reflected in these changes — House bill 416 and 463. The Commission made a commitment to some sporting groups that some hunt units would be removed from the motorized vehicle rule and they are units 48 and 57. The new brochure will reflect that change. This rule also allows the use of electronic calls for the take of black bears, mountain lions and wolves and also allows for the take of wolves by traps or snares, in season.

REQUEST TO HOLD: There were no questions from the Committee and **Vice Chairman Bair** announced that he had been given a request to **hold Docket No. 13–0108–1001**.

Docket No. 13–0109–1001 This rule governs the taking of game birds in the State of Idaho. **Ms. Kiefer** said they were made aware of the shooting of upland birds (chucker, quail, partridge, and pheasant,) from watercraft this past summer. She stated that they heard both positive and negative comments regarding this issue. **Senator Siddoway** inquired as to the status of this rule in the House. The reply was that the subcommittee did not recommend the adoption of the rule.

Docket No. 13–0109–1002 This rule also governs the taking of game birds in the State of Idaho. It will implement Senate bill 1285 that was passed in 2010 that allows nine year old hunters to apply for a controlled turkey hunt permit.

Docket No. 13–0110–1001 This rule governs the importation, possession, release, sale, or salvage of wildlife. **Ms. Kiefer** said this would implement Senate bill 1328 that was passed in 2010. This bill allowed the release of certain captured predatory unprotected wildlife alive, with written landowner permission. Senate bill 1342, passed in 2010, allows the Department to require certain records from taxidermists and furbearers, adding a reporting requirement for mountain lion and black bear parts. Also, a rule pathway has been created for the sale of rattle snake parts, which was discussed last year in this Committee.

Docket No. 13–0116–1001 This rule relates to the trapping of predatory and unprotected wildlife and the taking of furbearing animals. It implements Senate bill 1286 which classifies raccoons as predatory wildlife and clarifies the definitions of bait and ‘game animal’. Bait is defined as any animal parts, except bleached bones or liquid scent.

Docket No. 13–0116–1002 **Ms. Kiefer** stated that this rule refers to the trapping of predatory and unprotected wildlife and the taking of furbearing animals. The reasons for the change was because there was public concern over the placement of traps and snares near public travelways and injury to pets. The Commission worked with both the Idaho Trappers Association and the Upper Snake Idaho Trappers Association to try to come together with rules that would not be overbearing on the trappers, yet also address some of the public safety concerns. One issue that they were not fully able to address was **400 Methods of Take, 03. g. Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, or picnic area.**

Senator Stennett said that in her area, there have been reports of dogs getting into traps. In her travels, she discovered that one state posts signs to leash one’s dogs if traps are used within a certain perimeter of a campground. **Ms. Kiefer** stated that they could not post signs unless it was Fish and Game’s property. One benefit is that snares cannot be set without a break-away device.

Senator Cameron indicated that he had reviewed this rule in depth, as well as having read Mr. Patrick Carney’s letter to the Legislature. Mr. Carney is the president of the Idaho Trappers Association (ITA). Senator Cameron stated that there are several issues that the ITA has concerns with. At that point, **Vice Chairman Bair** said that **Senator Corder** wanted to read Mr. Carney’s letter and have it entered “**into the record**”. (Mr. Carney is a constituent of Senator Corder and could not attend the meeting.)

Following is Mr. Carney's letter:

To the Idaho Legislature: My name is **Patrick B. Carney**. I am **President of the Idaho Trappers Association (ITA)**. I am writing on behalf of the ITA and all trappers in the state. The ITA sent representatives to Kellogg and the Idaho Falls Idaho Fish and Game (IF&G) Commission meetings this past year to give input on their proposed rules.

When these rules were first presented, they would have regulated trapping in the state of Idaho out of existence. That is what we told the Commissioners. As it stands now, it is no better. I've read the minutes of the Commissioners' meetings where Jon Rachael states that the ITA changed its position on these rules, which could not be further from the truth. To set the record straight so it can be stamped in stone, the ITA does not embrace any action that would limit the ability of the trapping community to do their work. Never has the ITA or will the ITA ever knowingly do so. The ITA wants to promote safe practices for trappers and the public. The ITA will always be prepared to help with solutions to achieve these goals. If there is any misunderstanding, please let us know and we will correct them.

The issue was a couple trappers trapping along the Salmon River, I believe between Corn Creek and Shoup. They were setting traps in the campgrounds where one of the Fish and Game Commissioner's, Gary Powers, put his hand in some trapping lure that had been put on a picnic table and he said his hand smelled bad all day. That is where the campground, picnic areas, and trail head exclusion came from. These individuals were setting snares in the main trails above the Salmon River, blocking the trails, and told Fish and Game that it was legal, which it is. When asked to remove them, they refused. That is where the trail issue comes from. Those trappers do not belong to any organizations that could have possibly helped out. ITA was not notified that there was a problem or ITA would have sent someone to help work it out.

I have since told Fish and Game that we are willing to help resolve conflicts that may arise. I had called the National Forest Ranger stations and asked them if they were aware of any conflicts, they all said "no". I asked when the campgrounds were closed, they said they started closing them the day after Labor Day and by October 1st to the latest October 15, they were closed for the season, weather dependent. So we presented an option to the Fish and Game Commission to close that area along the Salmon River between Corn Creek and Shoup where the one or two campgrounds and picnic areas were of issue. At this time of year, late fall and winter, many steelhead fisherman are in there. The area for fishing is unique and has heavy usage at this time of year. This would seem to solve the problem without shutting down the entire state for one or two campgrounds or picnic areas, as the rest of the campgrounds are closed and have little or no use. We also proposed a season closure of the campgrounds statewide, from April 16th to October 20th, and that would still let us catch the surplus animals that are around the campgrounds, with an open season from October 21st thru April 15th. We also recommended banning lethal sets in the campgrounds, trail heads, and maintained trails. Lethal sets are sets that are set to dispatch the animal. These include snares, body gripping traps set from the ground to 36 inches about natural ground level, and dead falls set on the ground. The reason we would be willing to take the lethal sets out of these areas is to show our good faith effort for public safety. To my knowledge no pets have been killed or injured in these areas. Foothold traps do not pose the risks associated with these other sets. The animals use the campgrounds, picnic areas or trail heads for food, shelter, etc. This area is the same structure to furbearers as submerged islands are to fish, or ponds and lakes are to waterfowl. If you hunt or fish how would you like to be told that you can't take your fish or

birds within 300 feet of the very areas that they frequent? It would be like telling a bow hunter that is hunting antelope, that he could not shoot an antelope within 300 feet of a water hole. While he may occasionally get one, their success rate would fall so drastically, those hunters would find something else to do. Now I'm not saying that you can't catch animals away from these areas; however, it takes too much equipment and time to find where you can catch them away from these concentrating areas. So it makes it economically unfeasible to trap.

Also, if the surplus is not removed there will be more people and pet conflict. For example, territorial, food, diseases, rabies, distemper, parvo, etc. When I talked to the Forest Service, a lady in Stanley stated that if we didn't take the surplus animals they would have more raccoon problems, etc. As for the trapping on public highways, there needs to be more time to study which roads that need to be addressed. Trying to close the roads that have no winter maintenance, or that have road closures for big game areas are unnecessary. There are a lot of roads in the desert and forest that predators use as travelways. It would severely limit the taking of coyotes, fox, and wolves if we ever get a season on the wolves. Paved roads and main county dirt roads make sense to close, not forest service or BLM roads.

On the maintained trails issue, we recommend that all lethal sets be banned, but foot hold traps be allowed as all animals travel the trails, and the very few, if any, non target catches could be released unharmed. We thought that we could still catch the predators at a five foot (5") set back, but after trying a five foot set back, it drops our catch rate by sixty percent (60%). That is too much to make it economically feasible to trap. So if it is Fish and Games intent to stop the private control of predators and furbearers, this legislation does that. Trappers control the animals at no expense to taxpayers. In fact, we pay for the privilege to trap. We, the Idaho Trappers Association, proposed the mandatory snare breakaway on all snares to protect the safety of livestock and ungulates, not Fish and Game. If their real intent is safety, why didn't they propose things that really would have an impact on safety? Not perceived problems! The Fish and Game Commission thought that there would be a wolf trapping season this year. So they were talking to ITA about this. We told them that ITA wanted a mandatory trapping class to be eligible to trap wolves. So that there would not be a bunch of people out there doing stupid things getting all of us in trouble, with such a hot topic anyway. We are not unreasonable. In fact, we proposed a few other things that need to happen, but they were tabled. So much for public and pet safety.

I told Jon Rachael of Fish and Game that he didn't understand how much the predators run down the trails and roads. They use them to travel everywhere. He stated that he knows they travel down the roads and trails, Fish and Game has been trapping at those locations, that is where they catch them. So if that is the case, does this mean Fish and Game really does not want trappers to harvest these animals, since these rules will restrict our efforts? Also we agreed to the five foot (5') set back on the trails for lethal sets, snares, body grip traps, dead falls, etc. However, ITA opposed it on the footholds. The only trails that were supposed to be included were maintained trails (i.e. walking, snowshoeing, etc). Their definitions include all trails designated on any city, county, state, federal transportation or land management agency. The Forest Service, and BLM maps show almost all the trails, cow trails, game trails, etc. So once again, trapping is done in the state if you pass this bad piece of Fish and Game legislation or rules. We are asking on behalf of all trappers in the state to shut this legislation down, or you will have to find funding for more state employees to do this work as it will have to be done. The other outdoors men and women don't even have a clue how many more big game, birds, waterfowl, fish and non game animals are out there now because of what we do. We are not asking to get a pat on the back, we just want to be able to have our

livelihoods, personal fulfillment, sport or whatever each of us calls it. This will affect all livestock producers, guides, outdoor retail sales, tourists, outdoor enthusiast, virtually everyone, hunters, fisherman, etc.

Please look at this carefully as the passage of this is disastrous to the state.

Sincerely, **Patrick B. Carney**

President Idaho Trappers Association 208-599-5009 nafatrapp@q.com

Michelle Gutierrez Secretary Idaho Trappers Association mjtaxidermy@msn.com

Senator Siddoway asked Ms. Kiefer if these rules are approved by the Committees, will it have an affect on Wildlife Services when they do trapping to protect livestock? **Ms. Kiefer** said that Wildlife Services is not considered recreational trapping and they operate under a different set of rules. **Senator Siddoway** then inquired about the break-away device. **Ms. Kiefer** said that any device that is incorporated into a snare or snare component allows the loop to break open and the animal can then break free from the snare when a specified amount of force is applied. It does not apply to leg-hold traps. She will provide some literature to the Committee regarding this issue.

**Docket No. 13–
0117–1001**

This rule governs the use of bait for taking big game animals, clarifying the definitions for bait and game animals, and allows incidental take of wolves near bear bait sites.

Vice Chairman Bair said that concluded the rules for the Fish and Game Commission and thanked Ms. Kiefer and Mr. Burkhalter for their assistance. He encouraged the Committee to continue to read and become familiar with the information. He then turned the meeting back to the Chairman.

ADJOURN:

Chairman Pearce adjourned the meeting at 2:55 p.m.

Senator Pearce
Chairman

Juanita Budell
Secretary

AMENDED #1 AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, January 19, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------------------------------|---|--|
| PENDING RULES — DEQ | | |
| Docket No. 58–0102–1001 | Water Quality Standards | Barry Burnell, DEQ Water Quality Administrator |
| Docket No. 58–0117–1001 | Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater | Barry Burnell, DEQ Water Quality Administrator |
| Docket No. 58–0123–0901 | Rules of Administrative Procedure Before the Board of Environmental Quality | Doug Conde, Deputy Attorney General |
| PENDING RULES — IDPR | | |
| Docket No. 26–0134–1001 | Rules Governing the Idaho Protection Against Invasive Species Sticker Rules | David Ricks, IDPR Deputy Director |
| PENDING FEE RULES — IDPR | | |
| Docket No. 26–0120–1001 | Rules Governing the Administration of Park and Recreation Areas and Facilities | David Ricks, IDPR Deputy Director |
| PENDING RULES — IDL | | |
| Docket No. 20–0211–1001 | Timber Supply Stabilization Act of 1989 on State Forests | David Groeschl, Div. Administrator for Forestry and Fire |
| Docket No. 20–0214–1001 | Rules for Selling Forest Products on State-Owned Endowment Lands | David Groeschl, Div. Administrator for Forestry and Fire |
| PENDING FEE RULES — IDL | | |
| Docket No. 20–0304–1001 | Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho | Eric Wilson, Project Manager for Navigable Waters |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce

Vice Chair Bair

Sen Cameron

Sen Geddes

Sen Siddoway

Sen Brackett

Sen Heider

Sen Werk

Sen Stennett

COMMITTEE SECRETARY

Juanita Budell

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MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 19, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Werk, and Stennett

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M.

ANNOUNCEMENT: He then announced that Senator Geddes had been appointed as Chairman of the Idaho Tax Commission by Governor Otter. His replacement will be named in a few days. Chairman Pearce stated that he will miss him serving on the Committee, but wished him well in his new position. The meeting was then turned over to Vice Chairman Bair who continued with the Rules Review.

WELCOME: **Vice Chairman Bair** welcomed **Ms. Toni Hardesty, Director of the Department of Environmental Quality (DEQ)**, who presented an overview of DEQ's rules.

OVERVIEW: She stated that the Department has three rules for the Committee's consideration. The first rule is a water quality rule and will be presented by **Barry Burnell, who is the Water Quality Administrator**. This rule is in front of the Committee because of a lawsuit. The Environmental Protection Agency (EPA) was sued, due to an inadequacy of Idaho having an antidegradation implementation plan. DEQ was told they could develop a rule of their own or EPA would develop a rule for them. As a result of that, DEQ decided to develop their own rule.

The second rule, also addressed by Mr. Burnell, is about the reclamation and reuse of wastewater. These rules govern how, when and where reclaimed wastewater can be used. Cities and consulting engineers, who work for the cities, approached the agency last year and indicated they thought that after using the wastewater reuse rules, the rules needed to be evaluated for more flexibility, but still protect the public's health and the environment. DEQ also clarified some confusing language and reduced redundancies.

The third and final rule for DEQ is a change to their Administrative Procedures Act. This rule change is necessary so that DEQ's rules are consistent with Idaho Environmental Procedures Act. **Doug Conde, Deputy Attorney General for DEQ**, will present this rule.

Ms. Hardesty then introduced **Mr. Burnell**, who gave a Power Point presentation.

**Docket No.
58-0102-1001**

Federal law requires the state to have both an antidegradation policy and methods to implement the policy. Although Idaho has an antidegradation policy in rule, there are no procedures in the rules on how to implement the antidegradation policy. DEQ proposes to revise its Water Quality Standards to include procedures for implementing efforts to limit degradation of water quality. This proposed rule addresses: (1) Activities subject to antidegradation review; (2) Definition of degradation and impairment and the information needed to determine them; (3) How it is decided where each of the three levels of protection from degradation is applied; (4) Exemptions to antidegradation review; (5) Determination of insignificant discharges not warranting analysis of their degradation to high quality water; (6) How DEQ will evaluate changes in water quality; (7) Waste treatment alternatives analysis to identify least degrading option for significant degradation of high quality water; (8) Socioeconomic analysis needed to justify degradation of high quality water; and (9) What is needed to document existing sources of pollution are meeting required controls.

**Docket No.
58-0117-1001**

Mr. Burnell said that this rulemaking is necessary because DEQ had determined that Class A and Class B reclaimed wastewater are highly treated effluents and existing nomenclature and requirements may be too strict. Also, this rulemaking will add language to allow for time extension of reuse permits under certain conditions in order to reduce permit processing times. Other anticipated revisions will clarify current rule language, reduce redundancy with other rules and increase efficiency.

**Docket No.
58-0123-0901**

Mr. Conde stated that this rulemaking has been initiated to make revisions to the Rules of Administrative Procedure for clarification purposes and for consistency with the Idaho Administrative Procedure Act (APA) and the Environmental Protection and Health Act. The Board of Environmental Quality, appointed by the Governor, have two functions to the agency. One — is to hear contested case appeals and second — they adopt all the rules. At their hearing for the rules, there were no comments from the public. **Chairman Pearce** inquired as to how many cases are heard yearly and the answer was 10–12, with most cases resolved through settlement or motion.

Vice Chairman Bair thanked DEQ for presenting their rules, then welcomed the **Department of Parks and Recreation** to present their rules.

**Docket No.
26-0134-1001**

Director Nancy Merrill presented this rule which provides for an affidavit type process verifying the purchase of Idaho Invasive Species Stickers for enforcement of the program in lieu of the requirement to physically apply the sticker to a licensed outfitted or guided non-motorized watercraft. She stated that they have met with the marine officers, outfitters and guides, and they are proposing that the Department do this rule change. She feels this change will make it easier for the commercial users who have five or more boats.

**Docket No.
26-0120-1001**

Presenting this pending fee rule was **David Ricks, Deputy Director of IDPR**. This rule governs the administration of park and recreation areas and facilities and are necessary due to the immediate danger to State Park Operations as a result of the current state budget deficit and the resulting decrease of general fund support.

Proposal #1 is a fee of \$10 per night per non-camper vehicle parked overnight. This should generate approximately \$29,100 based on historical usage patterns.

Proposal #2 is a fee of \$2 per night per amenity provided. This should generate approximately \$59,080 based on historical usage patterns.

Proposal #3 is an increased entrance annual pass from \$35 to \$40; increased entrance annual pass second pass from \$5 to \$15; and increase the entrance fee surcharge from \$5 to \$10. This should generate approximately \$138,875 based on historical usage patterns.

Proposal #4 would increase camping extra vehicle fee from \$5 to \$8. This should generate approximately \$60,000 based on historical usage patterns.

Proposal #5 increases moorage overnight from \$5 to \$9 per night; increase

moorage camping on vessel from \$8 to \$10 per night; increase moorage camping on buoy from \$5 to \$9 per night. This should generate approximately \$3,700 based on historical usage patterns.

Proposal #6 strikes Subsection 275.02 (Individual campsite and facility reservations) and Subsection 275.03 (Multiple campsite and facility reservations) from this rule. While this is not specifically a fee change, this proposal provides for the potential of increased revenue by allowing for additional opportunities for customers to utilize the fee services offered by the IDPR. This change will allow the agency to respond more quickly to customer demands, market trends, and industry standards.

Due to time constraints, the rules for the Idaho Department of Lands will be heard next Monday, January 24.

Vice Chairman Bair then turned the meeting back to Chairman Pearce.

ADJOURN: **Chairman Pearce** adjourned the meeting at 3 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, January 24, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------------------|---|--|
| 3rd St Launch — CDA | Timeline of Communications and information | Nancy Merrill, Director of Parks and Recreation |
| PENDING RULES — IDL | | |
| Docket No. 20– 0211–1001 | Timber Supply Stabilization Act of 1989 on State Forests | David Groeschl, Div. Administrator for Forestry and Fire |
| Docket No. 20– 0214–1001 | Rules for Selling Forest Products on State-Owned Endowment Lands | David Groeschl, Div. Administrator for Forestry and Fire |
| PENDING FEE RULES — IDL | | |
| Docket No. 20– 0304–1001 | Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho | Eric Wilson, Project Manager for Navigable Waters |
| PENDING RULES — IDWR | | |
| Docket No. 37– 0310–1001 | Well Driller Licensing Rules | Tom Neace, IDWR |
| PENDING FEE RULES — IDWR | | |
| Docket No. 37– 0203–1001 | Water Supply Bank Rules | Brian Patton, IDWR |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett

Sen Heider
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
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MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 24, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Werk, and Stennett

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M.

ANNOUNCEMENTS: He announced to the Committee that there were several handouts in their blue folders that they should be aware of. It includes the Idaho Forest Products Commission's Budget Report; email from Dexter Pitman opposing Senate bill 1016; letter from Dale Atkinson regarding DEQ's Technical Guidance Committee; letters opposing IDL's rules changes from Rod Willmore, Willmore Lumber Company; Norman G. Huddleston; Todd Hatfield, Hatfield Log Homes; John Malloy, President/Sales & Marketing for Idaho Veneer; Kim Helmich, Helmich Industries; Kyle Kerby, President, J. I. Morgan Inc.; Gordon Cruickshank, Valley County Commissioner; letter from Robert E. Boeh, Idaho Forest Group, with specific comments regarding IDL's rules; and a memo, with attachments, from Director Merrill, IDPR, regarding the 3rd Street Launch, Coeur d'Alene.

3rd STREET LAUNCH: The **Chairman** welcomed **Director Merrill** and asked her to respond to the confusion regarding the possible closing of the 3rd Street Ramp in Coeur d'Alene. Director Merrill said their only interest in this project was because of boat ramps and access to water. The reason they are involved is because Idaho Code 67-2219 mandates their involvement. Idaho Code 67-7101 is in regards to the boating programs and waterways. She stated that IDPR has provided \$437,110 in grants to the 3rd Street boat ramp.

In late December, the Department found out there was a proposal by the city of Coeur d'Alene to redesign McEuen Park and close the 3rd Street boat ramp. Boaters who pay registration fees to IDPR voiced their concern to them. To keep the users informed, a letter was sent letting them know there may be impacts with this proposal. They were also given websites and contact information where they could find out more about the project. Because of the letter, some people thought IDPR was closing the boat ramp. When they found out we were only trying to inform them, many have sent thank yous and made phone calls thanking us for keeping them informed.

Two boating facilities that would most likely to be impacted, if the 3rd Street Launch was closed, would be the BLM boating facility at Blackwell Island and the IDPR operated facility at Higgens Point. At Higgens Point, there is no room for expansion of parking. On many summer days, all three facilities have had full parking lots. With the number of boaters using Coeur d'Alene Lake, loss of just one of these facilities would have a major impact on the user's ability to access the lake.

Chairman Pearce thanked Director Merrill for explaining the cause of the confusion regarding the 3rd Street Launch. He then turned the meeting over to **Vice Chairman Bair** who will continue the hearing on the Rules.

**RULES
REVIEW:**

Vice Chairman Bair welcomed **David Groeschl, Division Administrator for Forestry and Fire, Idaho Department of Lands (IDL)**. He will address two rules. They pertain to the Timber Supply Stabilization Act of 1989 on State Forests and Rules for Selling Forest Products on State-owned Endowment Lands. Inserted into the minutes is a copy of Mr. Groeschl's testimony.

**Docket No.
20-0211-1001
and
Docket No.
20-0214-1001**

Mr. Chairman and members of the committee, my name is **David Groeschl**, Division Administrator of Forestry & Fire for the Department of Lands.

Thank you for the opportunity to appear before you today to present testimony on the timber rules, referred to as Docket #20-0211-1001 and Docket #20-0214-1001 (pages 84-94).

The Department manages about 2.4 million acres of endowment trust lands, about 1 million acres are forested. As directed by the State Constitution, these lands are managed for the express purpose of maximizing revenues for the trust beneficiaries – K-12 being the largest beneficiary.

On July 20, 2010, the State Board of Land Commissioners directed the Department to enter into rulemaking to repeal IDAPA 20.02.11 and revise IDAPA 20.02.14.

IDAPA 20.02.11 are administrative rules associated with the Timber Supply Stabilization Act, Idaho Code 58, Chapter 10. The Timber Supply Stabilization Act was repealed by the 2010 Legislature due to constitutional concerns. The Act and companion rule essentially restricted the transport of state logs across state lines. One provision in the rule also addressed the federal ban of exporting state logs to other countries. That provision has been incorporated into the Department's timber sale contract. Therefore, IDAPA 20.02.11 is obsolete and is hereby recommended for repeal in its entirety.

In addition to repealing IDAPA 20.02.11, the Department is proposing changes to IDAPA 20.02.14 which are the Rules for Selling Forest Products on State-Owned Endowment Lands. These proposed changes were identified during the Forest Asset Management Planning (FAMP) process and discussed with representatives of the logging and forest products industry over the past 18 months. A summary of the proposed changes include:

A definition of public auction to include oral, sealed, and electronically submitted bids;

The ability of the Director to set personal use permit rates and values (i.e. – firewood, Christmas trees, boughs, etc.);

Authorization to conduct delivered forest product sales in addition to traditional stumpage sales;

A reorganization/combining of the two cedar pole sections into one section; and Clarifying language that addresses initial deposits and timber sale termination procedures.

The proposed changes associated with sealed bids and delivered product sales were designed to address concerns raised by small businesses, to make state timber more accessible to them, and increase the state's bidding pool.

The Department has discussed these proposed changes with interested parties over the last 18 months at IDL Purchasers' meetings, Associated Logging Contractors' meetings and at IFA Forestry subcommittee meetings (Intermountain Forest Association). In addition to these meetings, the Department conducted three (3) public hearings around the State (CDA, Orofino) and received 2 letters during the public comment period which ended on October 27, 2010. Those comments were supportive or asked for further information. The Department held an additional meeting on November 30, 2010 to provide further information on the implementation of sealed bids and delivered forest product sales. Why the need for these changes?

Currently, all timber sales are sold via oral auction as stumpage sales. To meet our fiduciary responsibilities, the demands of a global marketplace, and to be responsive to our customers requires more tools and flexibility in the way we sell timber than it did 25 or 50 years ago.

Sale data from 1994 to 2010 show that bid values are maximized when there are 4 or more active bidders at the table. Only 33% of all the sales sold during that time period had 4 or more active bidders. Where 4 or more active bidders participate in the oral auction process, final sell values are approximately 64% above appraised sale values. Over 41% of the sales sold between 1994 to present had 2 or fewer active bidders (1 bidder – 14%, 2 bidders – 27%) which resulted in sales selling at or slightly above appraised value. Unfortunately, the average number of active bidders at oral auctions has steadily declined to less than 2 bidders per sale over the last several years due to mill closures and consolidation and the reluctance of smaller businesses to participate in the oral auction bidding process.

A March 2010 peer-reviewed publication accepted into the Quarterly Journal of Economics compared open and sealed bid timber auctions in two market regions – Idaho/Montana and Northern California. In the Idaho-Montana market region, the three authors found that sealed bids attracted more bidders (especially smaller businesses such as loggers and smaller mills), generated 10% more revenue, and reduced the potential for bidder collusion or "cooperative behavior" when compared to oral auctions. They also found that a higher percentage of sealed bid sales were awarded to smaller businesses (loggers & small mills). (Note: The three authors include: Susan Athey – Professor of Economics at Harvard University, Jonathan Levin – Professor of Economics at Stanford University and Enrique Seira – PhD in Economics from Stanford University).

It seems intuitive to the Department that smaller operators are more likely to participate in and benefit from sealed bidding than in oral auctions which requires them to go head-to-head against larger purchasers.

During the public hearings on the proposed rule changes, the Department originally proposed to sell 50% of the sales via oral auction and 50% via sealed bid. However, after further discussions with interested parties, the Department has adjusted that recommendation and now proposes to sell 25% of the sales via sealed bid and 75% via the traditional oral auction process for the next few years to evaluate the effectiveness of the two methods.

In short, the flexibility to conduct both oral and sealed bid auctions may bring more small bidders into the auction process and improve potential revenue to the trust beneficiaries.

In addition to seeking auction flexibility, the Department is also seeking flexibility in the types of sales offered. The Department is currently authorized to sell timber stumpage and is seeking the flexibility to also sell a portion of the statewide sale volume through delivered forest product sales.

Over the next two years, the Department is proposing to sell 4 to 5 delivered forest product sales totaling about 8-10 million board feet – less than 5% of the Department's annual harvest volume. These initial projects will be evaluated and the results presented to the State Board of Land Commissioners as indicated in the July 20, 2010 Land Board minutes. This method of selling timber will be used on a limited basis and is not intended to replace traditional stumpage sales.

Smaller businesses, such as loggers, have indicated that it is difficult for them to buy traditional stumpage sales due to limited financial resources and the inability to get bonding like larger purchasers. Delivered product sales benefit smaller business, such as loggers, since the cash outlay and bonding requirements are much less than a traditional stumpage sale. They also benefit small niche mills since they only have to purchase the product sorts they want versus an entire timber sale.

Some states, such as Washington DNR, have conducted "contract harvesting" sales since 2003 and have shown that contract logging and direct marketing of forest products can benefit loggers, expand the customer bidding pool for traditional and niche product markets, and yield an additional 10-15% in revenue compared to traditional stumpage sales. Delivered forest product sales are also the preferred method of selling timber by several consulting firms, TIMO's and REITS (Timber Investment Management Organization & Real Estate Investment Trust).

Additional benefits associated with delivered forest product sales include:
shortened sale completion timeframes from 2-4 years (traditional stumpage sale) down to 3-6 months (delivered product sale);
more control, flexibility and predictability of sale results;
reduced bonding requirements for logging contractors compared to traditional stumpage sales;
increased bidder activity, especially smaller businesses
reduced risk to bidders since they buy only the product sort(s) they want instead of an entire sale;
reduces risk of "hardship terminations" for smaller purchasers;
improved utilization and merchandizing of products; and
provides development opportunity for Department employees to broaden forestry experience and marketing skills.

In closing, these proposed changes will allow the Department to implement the recommendations in the Forest Asset Management Plan and meet its fiduciary responsibility to the trust beneficiaries. These proposed changes also help to maintain traditional markets while providing greater opportunities and benefits for smaller operators. At this time, I would be happy to answer any questions the committee may have.

Senator Siddoway said that Committee members have received a number of letters from owners of smaller log operations opposing this rule and he asked for help to understand why. **Mr. Groeschl** answered by naming some of the benefits for the smaller businesses. One is that IDL sells directly to the small purchaser. They can keep both the logging site of their business busy, as well as obtain products off the direct sales. The delivered product sale adds additional flexibility to the Department and does not take away from the small businesses.

Senator Brackett stated that the small owners are still upset and inquired as to where the 'disconnect' lies. **Mr. Groeschl** said that he thought it might be the various levels of participation that has taken place in the past. Several of the small businesses were not present at the public hearings and no written comments were received during the comment period. He said that maybe there is a gap in communication or a lack of understanding.

TESTIMONY: **Todd Hatfield, Owner of Hatfield Log Homes**, testified. Following is a copy of his oral testimony.

The Idaho Land Board is asking the Legislature for rule changes that will bankrupt small logging companies, increase unemployment in rural communities (which already hovers at 20%), lowers wages and reduces money for Idaho schools. These changes are being presented ever so subtly to our Representatives.

The Idaho Department of Lands has proposed a change from an open oral bid process on timber sales to sealed bids. This method lacks transparency and the devil is in the details. More on this in a moment.

Another rule change calls for, "Delivered Product Sales" using a "Qualified logger". The first point here is that the Land Board would now be competing with the private sector in marketing timber. Second, the contents of the rule changes that the Department of Lands will not tell the Legislators or small logging companies. That is, what will determine a "qualified logger"? It should be noted now that just about anyone is free to bid on State timber sales, sawmills, loggers, etc. Most are purchased by sawmill companies and they hire the logging company. Under the Qualified logger worksheet, if logging is not your primary business, you are not qualified to bid. This would eliminate sawmills and manufacturers from bidding. The whole dynamic of forest to product process will change, without guarantee of success or benefit to the endowments. Additionally, to become a qualified logger includes, financial statements, lines of credit, credit rating, available equipment, harvesting experience, contracting experience, organizational structure, and logging association memberships. The answers to all of these questions will be given a rating to determine qualification. The logging company's submitted bid will be rated at 40% of the total evaluation. It becomes quite apparent that the bigger the company, the higher the qualification. Small companies that are well qualified, simply cannot qualify on the Department of Lands worksheet. Also, why should it matter if you belong to an Association?

The Department of Lands is also reserving the right to reject any bid from the criteria mentioned, hence the need for sealed bids. Forest managers will be able to reject a bid for preference, prejudice or politics. This is already happening on USFS sales. Under the proposed new rules, most small companies, having invested \$100's of thousands of dollars in equipment may be brushed aside by state bureaucrats.

The proposed changes remove future opportunities for new businesses to start up, period. The Idaho Department of Lands will decide who works and who does not. If they can reject a low bid on the production side, how will that fit the mandate for maximum revenue?

From a department employee, "The Idaho Department of Lands is not anticipating hiring additional employees". This is an unrealistic statement. They will now be the liaison between purchasers (sawmills) and logging companies. There will be marketing, quality control, and some liability involved. What about new accounting systems and market analysis? They have not proven an increased benefit to the Endowment to warrant the changes. With the recent knowledge of the Land Board purchasing commercial property and businesses, what will stop the future purchase of a sawmill or agricultural land as well as qualifying farmers?

Adopting these new rules will be a major misstep for the Land Board, Endowment Funds, the timber industry, rural communities and the trust in Government leadership. The Department of Lands does an excellent job of forest management and currently operates through a proven fair and equitable process for all involved.

TESTIMONY: Testifying next was **John Blattler**. His testimony is inserted into the minutes.

Thank you for the opportunity to speak before you today. I have not worked in the timber industry. At best, I am merely a student of government agencies and admittedly have concentrated more specifically on Federal Agencies and see a hidden headless branch of government growing out of control. It appears the procedure for initiating agency rule changes at the federal level is different than at the State

Here, I'll cite only one example:

Last year the EPA came up with the absurdity that CO2 is a toxic gas. We all know CO2 is absolutely essential to the plant life cycle. Without it we wouldn't even have trees to harvest. In an attempt to change this, the House and Senate came up with HJR 66 and SJR 26. So we see this is run more by another absurdity, Cap and Trade, rather than scientific logic.

The Idaho Land Board is an agency set up to manage State lands. It is not supposed to be in the business of timber sales. As I see it, their job is to oversee an orderly usage and preservation of our forests. Is it their purpose and function to make it more difficult for small business to operate in our State? In a recent study by ID. Natural Resources Policy Analysis Group, they indicated that each forest product job creates two more jobs. So the effect of this new ruling has a greater impact than just to the small logger.

I realize the motivation underlying this rule change is an attempt to garner greater profits. Why even the Endowment Fund Investment Group has chosen to go in competition with the private sector in being owner of public storage units, with intention to advance into other commercial enterprises.

This is not a good direction in which to head. In these times we need less government control, not an increase which ultimately leads to larger government. Where constitutionally is the authority given for government or an agency thereof to get into the private sector? Is the new role of government now to let us be governed by the bureaucracy of State and Federal Agencies?

TESTIMONY: Written testimony was submitted by **Ms. Robin Nettinga, Executive Director for the Idaho Education Association**, and has been inserted into the minutes.

Members of the Senate Resources and Environment Committee, Thank you for the opportunity to comment on Docket No. 02.0214.1001, Rules for Selling Forest Products on State-Owned Endowment Lands.

The Idaho Education Association is a member of the Idaho Children's Land Alliance Supporting Schools, more commonly known as CLASS. CLASS is comprised of education organizations serving as guardians on behalf of the beneficiaries of Idaho's school trust lands. Because CLASS has not met recently as a group about this issue, I am offering my comments on behalf of the Idaho Education Association.

Our organization believes that the state of Idaho has an absolute duty to manage Idaho school trust lands for the exclusive long-term sustainable benefit of Idaho's public school children. The Association further believes that the Idaho Land Board must exercise its fiduciary duty by growing the permanent endowment fund.

Based on our understanding of this rule and the information provided to this committee by the Department of Lands, it appears that this rule change could increase revenue to the public school endowment.

We also appreciate the prudent approach and the research component the Department of Lands intends to employ to determine whether the changes to the process will benefit everyone involved. For these reasons, we would support this rule change.

TESTIMONY: **Mr. Jerry Deckard, representing the Associated Logging Contractors of Idaho**, said there are approximately 400 logging contractors in Idaho and they have been working with the Department the past several months airing their concerns. One of the provisions that he wanted to make the Committee aware of is that the Department has proposed four or five sales over the next year. At the end of that period, after the sales have been reviewed, if they are not producing what they are supposed to produce, Mr. Deckard said they would be the first to be back here to ask for a review of the rule; however, if it does work, which he believes it will, it will provide more revenue to the various endowments and provide the small purchasers and loggers the opportunity to buy sales.

Mr. Hatfield responded by saying that there are hundreds of small logging companies that are not members of the Associated Logging Contractors of Idaho. Some of them work directly with the mills and don't have to put up a deposit to go to work. He feels there will be a shift and they will have to put up money for bonding.

WELCOME: **Vice Chairman Bair** welcomed **Mr. Eric Wilson, Project Manager for Navigable Waters**. He will present a pending fee rule for the **Department of Lands**.

Docket No.
20-0304-1001 This rule governs the regulation of beds, waters, and airspace over navigable lakes in the state of Idaho. A statutory change enacted during the 2010 legislative session requires a rule conflict to be removed. This will allow the replacement of some single and two-family docks without a permitting process. Another statutory change enacted during the 2010 legislative session allows the Department to raise the application fees for some encroachment types. Lastly, the department proposes to lower the application fee for small domestic waterlines.

Application fees will be increased from \$250 to \$300 for single and two-family docks, and from \$250 to \$550 for bank stabilization and erosion control. Application fees for domestic water intake lines that serve four houses or less will be decreased from \$1,000 to \$300.

Vice Chairman Bair thanked Mr. Wilson for his explanation of this rule. There were no questions from the Committee. He then announced that the Rules for the Department of Water Resources will be heard Wednesday, January 26. He then turned the meeting back to Chairman Pearce.

ADJOURN: **Chairman Pearce** adjourned the meeting at 3 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, January 26, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------------------|---|---|
| | PENDING RULES — IDWR | |
| Docket No. 37-0310-1001 | Well Driller Licensing Rules | Tom Neace, IDWR |
| | PENDING FEE RULES — IDWR | |
| Docket No. 37-0203-1001 | Water Supply Bank Rules | Brian Patton, IDWR |
| DISCUSSION OF ISSUES | IDAHO FISH AND GAME COMMISSION | Tony McDermott, Fred Trevey, Bob Barowsky, Wayne Wright, Randall Budge, Cameron Wheeler, Gary Power |
| HEARING | Confirmation hearing of Robert (Bob) C. Barowsky to the Idaho Fish and Game Commission to serve a term commencing June 30, 2010 and expiring June 30, 2014. | |
| HEARING | Confirmation hearing of Randall C. Budge to the Idaho Fish and Game Commission to serve a term commencing June 30, 2010 and expiring June 30, 2014. | |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

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MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 26, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He welcomed members of the audience and the Idaho Fish and Game Commissioners.

MOTION: **Vice Chairman Bair** made a **motion** for the approval of the minutes of January 17, 2011. The motion was **seconded** by **Senator Siddoway**. The motion **passed** unanimously by voice vote.

ANNOUNCEMENTS: **Chairman Pearce** said there were several handouts in the Committees' blue folder. It included the minutes; letter delivered by Steve West from Robert Boeh regarding IDL rule; letter from Director Groen regarding Idaho Department Fish and Game property; and information on the two Gubernatorial appointees. The yellow folder contains handouts from the IDFG and the green folder has letters and emails objecting to the reappointment of Commissioner Budge.

The Chairman then turned the meeting over to **Vice Chairman Bair** who will conduct Rules Review for the **Idaho Department of Water Resources (IDWR)**.

Docket No. 37-0310-1001 **Director Gary Spackman** presented this pending well driller licensing rule for IDWR in the absence of Tom Neace.

He stated that last year, the professional association for the well drillers of Idaho approached IDWR and requested the possibility of amending the well drillers licensing rules. IDWR worked with the Idaho Groundwater Association in editing the existing rules. These rule changes were driven by the organization for whom the rules are written. An agreement was reached in placing the text in the rules; notification was published regarding the rulemaking; letters were sent to all licensed well drillers in the state; and a meeting was held in July. Five people attended and their comments were considered. Director Spackman said it is his understanding that the Well Drilling Association has approved the adoption of these rules. The Idaho Water Users also expressed their support.

Following are the proposed revisions for modification of the experience requirements for a drillers license:

The current requirement is 30 months of drilling as an operator to be eligible for a drillers license. These revisions propose 24 months of drilling to be eligible for a drillers license.

Exams are currently offered monthly and this revision would be changed to quarterly.

Currently, every licensed Driller and Operator II are required to earn 16 continuing

education credits every two years. These revisions propose reducing the requirement to 14 continuing education credits every two years.

Regarding the applicant's compliance history, it has been limited to the past five years for evaluation by the Director on Enforcement issues. The proposed change is that it will no longer be limited. The Director can look at the entire drilling history of compliance.

The definitions have been modified to be consistent with the revised well construction rules IDAPA 37.03.09. The Well Construction Rules were revised in 2009.

TESTIMONY: **Mr. Norm Semanko, Executive Director, Idaho Water Users Association, Inc.** testified that **IWUA** supports these rule changes, as well as the **Idaho Ground Water Association (IGWA)**. He stated that they appreciated being able to work with IDWR on these rules.

Docket No. 37-0203-1001 **Mr. Brian Patton, IDWR**, presented this pending fee rule. The pending change to the rules would enact a \$250/per water right lease application filing fee, up to a maximum of \$500 for "stacked" water rights on the same parcel of ground. This pending fee will not apply to Rental Pools operated by local committees.

Overview of the Water Supply Bank:

- Authorized by Idaho Code 42-1761 through 42-1766;
- Exchange market operated by Water Resource Board to facilitate marketing of water rights (natural flow and groundwater);
- Provides a mechanism to temporarily change water rights;
- Can substitute for transfers;
- IDWR operates the Bank for the Water Resource Board;
- The Bank is not a rental pool;
- The purpose is to encourage the highest beneficial use of water, and to provide a source of water supplies for new and supplemental uses;
- An incidental benefit is protection from forfeiture - this has become a significant use of the Bank.

Current Bank Fee Structure:

- The current rental rate is set by the Board at \$14/acre-foot;
- When a water right is rented from the Bank, IDWR receives 10% (\$1.40/acre-foot) to help offset Bank operations;
- The remainder (90% = \$12.60/acre-foot) goes to the water right owner;
- This generates \$15,000 to \$19,000 annually for Bank operations at current activity levels;
- However, it takes \$50,000 to \$60,000 annually to operate the Bank at moderate levels, and about \$100,000 annually at optimal levels;
- The balance has been covered by IDWR's General Fund appropriation.

Reason for Pending Fee Increase:

- Over the past decade use of the Bank has increased substantially - lease applications into the Bank have increased 2,500% and applications to rent water from the Bank have increased 1,000%;
- With the increase in the use of the Bank and reductions in General Fund appropriations, IDWR does not have enough General funds to operate the Bank and other water right programs;
- As a result the Bank has developed a large backlog of unprocessed applications, which will continue to grow unless additional funding is dedicated to the Bank.

Public Process by Water Resource Board and Department of Water Resources to Determine amount of Pending Fee Increase:

- The Board examined this issue in a series of subcommittee meetings during the spring and summer of 2010 during which input was solicited from the water user community;
- The Board at its July 23, 2010 meeting voted to amend the Rules to enact a \$250/water right lease application fee and to increase the amount of the rental fee retained by IDWR from 10% to 25% in order to optimally fund Bank operations;
- IDWR held a public hearing on the proposed rule change on September 21, 2010;
- The changes were submitted as pending fee rules;
- As a result of further public input, on November 19, 2010 the Board voted to amend the pending fee rules to address concerns;
- The final version of the pending fee rules would enact a \$250/water right lease application filing fee, up to a maximum of \$500 for "stacked" rights on the same parcel of ground, and to leave unchanged the 10% rental fee currently retained.

Effect of Pending Fee Rule

- The pending lease application filing fee is expected to generate about \$37,000 annually;
- When combined with the 10% rental fee, the Bank would generate \$52,000 to \$56,000 annually from program fees at current activity levels;
- This would pay for 1.0 staff to operate the Bank, up from the current minimal staffing level of 0.50 staff necessitated by budget reductions, but less than the 2.0 staff needed to optimally operate the Bank.

Vice Chairman Bair stated that there are water banks at different levels - state and district. He inquired as to how it all fits together. **Mr. Patton** replied that water banks at the district level are actually rental pools and those are limited to exchange of storage water allotments from user to user. The statewide water bank deals primarily with natural flow and groundwater. Exchange of storage water is handled through the rental pools operated at the local district level. **Vice Chairman Bair** then asked if these rules only apply to the state water bank and not to local district rental pools and **Mr. Patton** said that was correct.

Senator Brackett inquired as to the amount of backlog and what the problems are with it. **Mr. Patton** said that the backlog of lease application filing fees stand at approximately 326 (waiting to be processed). The applications for rentals from the Bank have been reduced from 65 in August to 17 today. That is a result of pulling people from other programs in order to reduce the work load. In terms of time, there are approximately six to eight months delay for lease applications.

**GUBERNATORIAL
APPOINTMENT:**

Vice Chairman Bair thanked those presenting the water rules and announced that voting, with regard to the rules, will take place on Friday. He then turned the meeting back to the Chairman.

Chairman Pearce announced that there are two Fish and Game Commissioners up for reappointment and they are here today. Speaking first was **Commissioner Robert "Bob" Barowsky**. Commissioner Barowsky's reappointment to the Idaho Fish and Game Commission is from June 30, 2010 to June 30, 2014.

Commissioner Barowsky retired in 2005 after a 35 year law enforcement career and the last 25 years as Payette County sheriff. He was also a Fruitland city councilman and leader in several civic organizations. He served as president of the Idaho Sheriffs Association in 1997.

In 2004, he ran for the Idaho Senate as a Democrat. He withdrew from the campaign for that same office this year to take the position on the Commission. Mr. Barowsky stated that "having been born and raised in Idaho, he has great respect and love for all of Idaho's natural resources. He has hunted and fished for several decades, and has a strong commitment to maintain for every resident the wonderful opportunities that he has enjoyed in Idaho's outdoors."

A question that was asked of **Commissioner Barowsky** was his view on the sterilization of wolves. His response was that the Department should manage the wolves at the level that is appropriate and that sterilization would be an extremely labor-intensive process. Another question was regarding sportsmen feeling that the Commission was not responsive to the 'average' sportsman and Commissioner Barowsky was asked what he is doing in his district to address that issue. He stated that his email address is available, as well as a phone number. He also attends all the meetings that are scheduled, as well as giving talks to sporting groups when asked to do so. When asked what he would like to achieve this term, Commissioner Barowsky indicated that the fisheries are doing an outstanding job. In the Weiser area, they are trying to control some of the big game that are invading private land. The chuckar population is on the rebound and there has been an extended season on the water fowl. He is concerned about the big game herd in the McCall area, east of Highway 55.

Senator Heider asked about alternative energy sources affecting the sage hen population. Commissioner Barowsky said they would have to work with the U.S. Fish and Wildlife Services to establish a guideline for policy over what would be allowed in their nesting territories.

Senator Siddoway said that he was upset with the way the Commission voted the last time when they had an opportunity to get aggressive with the wolves. He felt there needed to be some changes and he asked Commissioner Barowsky his feelings about predator prey and how he intends to regulate hunter opportunity on the ungulates to match that. **Commissioner Barowsky** said that there is no control over certain predators, but there is control over bears and lions. They can regulate the take of those particular predators to help increase the size of the ungulate herd. He stated that at this time, their objective is to get the ungulate herds up. The only other option is to reduce the opportunity for sportsmen. **Senator Siddoway** then asked if he was willing to reduce the hunter opportunity in those areas where the wolf has created such a decline in the ungulate population. **Commissioner Barowsky** said that on the advice of the Department, he would need to evaluate that, but if that is the only means necessary to reduce the opportunity for sportsmen, then that is a decision he would have to make. Another question from **Senator Siddoway** - was the Department progressively pursuing ways to go after the predator populations that are affecting the animals in certain

units? And is the Department, under the 10 (j) rule, aggressively working towards utilization of that opportunity? **Commissioner Barowsky** said that everything he has researched indicates that they have and they have taken a strong action this year. Three hundred wolves were taken out in a 15 month period when they had full control over that particular animal. **Senator Siddoway** said that when he attended the Commission meeting that set the quota for 220 wolves, Mr. Barowsky voted in the majority. He then asked him if he had that same decision to make today, would he make the same choice? **Commissioner Barowsky** said yes. He said that his logic was they had other means necessary to control.

Chairman Pearce inquired as to what was the motivating force that caused the Commission to remove the 2008 plan. **Commissioner Barowsky** said that he felt it would allow the state 100% management and the possibility of a settlement that would give full control of management to the Department of Fish and Game. He said it was a moving target and they went back to the original plan and evaluated it from there.

Chairman Pearce thanked Mr. Barowsky for his participation, then welcomed **Commissioner Randall Budge** who is also being reappointed to the Fish and Game Commission, with his term commencing June 30, 2010 and expiring June 30, 2014.

**GUBER-
NATORIAL
APPOINTMENT:**

The 'bio' furnished by Mr. Budge indicates that "he was raised on a cattle ranch along the Bear River in Bear Lake and Caribou Counties, and attended school in Soda Springs, Idaho. He received Business Finance and Economic degrees from Utah State in 1973 and received his Juris Doctorate degree from the University of Idaho College of Law in 1976.

He is a partner in the law firm of Racine, Olson, Nye, Budge & Bailey Chartered, with 29 lawyers and offices in Pocatello, Boise and Idaho Falls. His areas of practice emphasize water law, real estate, business, estate planning and public utilities.

For many years Randy has represented numerous canal companies, farmers and developers on the Snake, Bear, Portneuf and Malad Rivers. His firm represents the Idaho Ground Water Appropriators, Inc. (IGWA) and its seven ground water districts' members in the ongoing Snake River Basin Adjudication and administrative proceedings before the Idaho Department of Water Resources. Randy is lead counsel in defending groundwater users in pending actions brought by spring users and surface water users that seek to curtail groundwater pumping from the Eastern Snake Plain Aquifer which are expected to shape the future of water use and irrigated agriculture in Idaho. He also represents the Idaho Irrigation Pumpers Association and Monsanto in electric utility matters.

Randy has a passion for outdoor activities and is an avid fisherman, hunter and skier and biker. He has served on the Idaho Fish & Game Commission since 2006. He and his wife, Becky, have been married for 35 years and have three married children and six grandchildren."

Commissioner Budge said that one concern in his region (southeast corner of Idaho) is the wolf issue, as it is having an adverse affect on the wildlife. He stated that the mule deer initiative is something they continue to perpetuate. It has not been as effective in restoring the deer population as they would like, but they are making slow progress. Fishing issues in his region are also significant. New regulations provide year round fishing on the Portneuf and on the Snake below American Falls. Efforts have been made to restore Bonneville cutthroat in the Bear River drainage and Yellowstone cutthroat in the Blackfoot River drainage. Also, they are dealing with a severe pelican problem that affect the fisheries in the Blackfoot Reservoir and is starting to expand in Bear Lake. Commissioner Budge stated that these are some primary issues of interest to him that he has focused on the past four years and would like to see them move forward in the next four years. **Senator Stennett** said that she noted that Commissioner Budge is a lobbyist for the Groundwater Appropriators and inquired if he felt there was a conflict of interest; also, how did he balance his time? **Commissioner Budge** replied that managing time is something that everyone struggles with. With respect to the Fish and Game Commissioner job, he said that he is the only one that works full-time, but is able to balance and utilize his time efficiently. Most Fish and Game meetings and sportsmen's meetings are held in the evenings and a lot of communication is by email. As to being a lobbyist, he stated that on occasion, he receives calls that have comments from legislators on issues that relate to water and he feels it is due to the fact that his firm has represented the Idaho Ground Water Appropriators for 15 years. Commissioner Budge stated that he has yet to encounter an incident that would create a conflict of interest. with respect to Fish and Game issues. If an issue does arise, he said that he would recluse himself.

Senator Cameron stated that he had received a number of emails that stated that Commissioner Budge "does not listen".and asked him to explain. **Commissioner Budge** said that he and the Commission do listen to the public, but they don't always agree or do what the public wants. Another concern Senator Cameron raised was regarding the Commissioners "rubber stamping" what the Department wants and asked Commissioner Budge if he ever challenges the Department and/or their decisions? **Commissioner Budge** said that the Commissioners are all independent thinkers and try to analyze the issues before them. Their decisions are based on biology.

Vice Chairman Bair said that he had heard Commissioner Budge speak about one of the pending rules that deals with the shooting of chucker partridges from the bow of a boat and asked him if it was a good or bad rule. **Commissioner Budge** replied that the rule was intended to address an activity that has been on-going and very controversial for a number of years, primarily in the Lower Snake area above Lewiston. Commercial and guide folks use large jet boats and put a large platform with "gunners" across the front of the boat on opening day when the temperature is hot and the birds are down by the water. The "gunners" then ground sluice a lot of birds. He stated that many who consider themselves sportsmen don't consider this very sporting, fair chase, or ethical. As a Commission, they felt it was things like that, that give hunters a bad name. **Commissioner Budge** indicated that the rule had been defeated; however, **Vice Chairman Bair** reported that the Senate Resources Committee had not yet voted on the rule and it was still very much alive. Commissioner **Budge** said that was encouraging to hear.

That concluded the interviews with the Gubernatorial candidates.

TESTIMONY: **Mr. Kelton Larsen**, representing himself, asked to make some comments regarding Commissioner Budge. He feels there is a conflict of interest regarding water issues in the Bear Lake area. Also, the average sportsman feels the Commission is too tied to the Idaho Fish and Game - they don't listen, and is rubber stamped. Another item he wished to discuss was the problem with coyotes in Grace. A bill was passed and money was allotted for that purpose and he inquired as to where the money has gone. Senator Cameron volunteered to look into the matter.

Two other issues he addressed were regarding non-resident tags in the Franklin Basin area (where the deer population is down) and the survey taken by The Outdoorsman. Out of 1,000 sportsmen, 34% rated Idaho as the worst state in managing its big game population, when considering the state's potential.

In closing, Mr. Larsen said that he was upset about the Lolo area. He said that Fish and Game and the Commissioners claimed that wolves was not the problem and it went on for some time. He stated that his group put together some data and IDFG finally admitted there were wolves in that area. Mr. Larsen feels they missed a great opportunity with the 10(j) rule. He questions who the IDFG is representing.

TESTIMONY: **Mr. Butch Slaughter** was next to testify. He said as a livestock producer and sportsman, he wanted to talk about the ungulate population. He feels there has been a lack of communication, plus the Endangered Species Act is broken. He feels something needs to be done soon, as the wolves are over-populated and the deer and elk are going downhill.

IDAHO FISH AND GAME COMMISSIONERS: **Chairman Pearce** said that with the remaining time, there would be a period of questioning the **Idaho Fish and Game Commissioners**. They include **Tony McDermott, Fred Trevey, Wayne Wright, Cameron Wheeler, Gary Power, Bob Barowsky, and Randall Budge**.

Chairman Pearce said that everyone knows that the herds are declining and asked if the same number of tags will be sold in 2011 and harvest as many as will fill those tags or preserve the herds and not decimate them further? **Commissioner Power** said that in the Salmon Region, they have dropped the controlled hunt and will possibly be reducing in other areas. It also depends on where they are within their objectives. **Chairman Pearce** asked the Commissioners if they were prepared to lower revenue to get through this tough time?

Commissioner Wheeler will be leaving in June, after eight years serving on the Commission, and the Chairman asked him to reflect on his time spent on the Commission. The **Commissioner** feels that a lot has been accomplished in eight years. Problem solving with the Legislature has been made possible. Also, he feels the Department and the Commission has integrity and is truthful. He stated that they try to be transparent and provide information. Commissioner Wheeler praised Director Cal Groen and Ms. Sharon Kiefer, Assistant Policy Director. He stated that the issues with wildlife are just as complex as they ever were and problems with the Endangered Species Act "is a pain". One issue that the Commissioner said he wanted to make the Committee aware of is the grizzly bear issue. He feels the states have lost control over it and the object is - is to get a natural reintroduction through Central Idaho to Yellowstone Park, down the Continental Divide. He asked the Committee to get pro-active and get control over this issue some way. Commissioner Wheeler said that to get another predator, plus the wolf, the Committee and Commission will have their hands full - he said that he can see it coming.

Senator Brackett asked the Commissioner what he would do different, knowing what he knows now. **Commissioner Wheeler** stated that he would not have spent as much money on research and efforts to try to understand wolves. He feels it was never about the science and biology, but the politics of wolves. Time and money were wasted, as well as false hopes that were put out.

Chairman Pearce thanked the Commissioners for coming before the Committee today and invited them back so that the discussion can be continued. He then adjourned the meeting at 3 P.M.

ADJOURN:

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Friday, January 28, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------------------|--|--------------------|
| Rules Review | Voting on Pending and Pending Fee Rules (No testimony taken) | Vice Chairman Bair |
| Appointment | Committee consideration on the appointment of Robert "Bob" C. Barowsky to the Idaho Fish and Game Commission | Chairman Pearce |
| Appointment | Committee consideration on the appointment of Randall C. Budge to the Idaho Fish and Game Commission | Chairman Pearce |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Friday, January 28, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He welcomed the members of the audience and advised the Committee to review the handouts in their blue folders.

MOTION: **Senator Siddoway** made a **motion** for the approval of the minutes of January 19, 2011. The motion was **seconded** by **Senator Heider**. The motion **passed** unanimously by voice vote.

RULES REVIEW: The **Chairman** then turned the meeting over to **Vice Chairman Bair** who will preside over the voting on the pending rules and the pending fee rules that are before the Committee.

Docket No. 13-0102-1001: **Rules Governing Public Safety. Senator Werk** made the **motion, seconded** by **Senator Siddoway**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

Docket No. 13-0104-1001: **Rules Governing Licensing. Senator Siddoway** made the **motion, seconded** by **Senator Heider**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

Docket No. 13-0104-1002: **Rules Governing Licensing. Senator Siddoway** made the **motion, seconded** by **Senator Heider**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

Docket No. 13-0106-1001: **Rules Governing Classification and Protection of Wildlife.** This rule was adopted on January 17, 2011.

Docket No. 13-0108-1001: **Rules Governing the Taking of Big Game Animals in the State of Idaho. Senator Brackett** made the **motion, seconded** by **Senator Siddoway**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

Docket No. 13-0109-1001: **Rules Governing the Taking of Game Birds in the State of Idaho. Senator Stennett** made the **motion, seconded** by **Senator Cameron**, for the adoption of this rule. The motion **passed** by majority voice vote. **Senator Heider** asked to be recorded as voting **nay**.

Docket No. 13-0109-1002: **Rules Governing the Taking of Game Birds in the State of Idaho. Senator Pearce** made the **motion, seconded** by **Senator Siddoway**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

Docket No. 13-0110-1001: **Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife. Senator Pearce** made the **motion, seconded** by **Senator Cameron**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

- Docket No. 13-0116-1001:** **The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. Senator Cameron** made the motion, **seconded** by **Senator Werk**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 13-0116-1002:** **The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. Senator Cameron** made the motion, **seconded** by **Senator Heider**, for the adoption of this rule. The motion **passed** by majority voice vote. **Senator Siddoway** asked to be recorded as voting **nay**.
- Docket No. 13-0117-1001:** **Rules Governing the Use of Bait for Taking Big Game Animals. Senator Siddoway** made the motion, **seconded** by **Senator Cameron**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 20-0211-1001:** **Timber Supply Stabilization Act of 1989 on State Forests. Senator Pearce** made the motion, **seconded** by **Senator Siddoway**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 20-0214-1001:** **Rules for Selling Forest Products on State-Owned Endowment Lands. Senator Pearce** made the motion, **seconded** by **Senator Werk**, for the adoption of this rule **except for the following sections and subsections:**
 1. Under definitions, Section 010, subsection 16, do not include the words: "**16. PUBLIC AUCTION** Any advertised sale with notice to the general public at which bids are made and accepted. Public auctions include, but are not limited to, oral auctions and the announcement of sealed or electronically submitted bids", and,
 2. In Section 023, do not include the words "**023. DELIVERED PRODUCT SALES.**"
 The Director may contract logging services and sell forest products at public auction. Purchasers of delivered forest products will be required to provide a ten percent (10%) initial deposit and a guarantee of payment bond." A roll call vote was requested. Voting aye were Senators Werk, Stennett, Cameron, Brackett, Heider, Siddoway, Pearce, and Bair. There were no nay votes. The motion **passed** unanimously.
- Docket No. 20-0304-1001:** **Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho. Senator Werk** made the motion, **seconded** by **Senator Stennett**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 26-0120-1001:** **Rules Governing the Administration of Park and Recreation Areas and Facilities. Senator Pearce** made the motion, **seconded** by **Senator Stennett**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 26-0134-1001:** **Rules Governing the Idaho Protection Against Invasive Species Sticker Rules. Senator Siddoway** made the motion, **seconded** by **Senator Heider**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 37-0203-1001:** **Water Supply Bank Rules. Senator Brackett** made the motion, **seconded** by **Senator Pearce**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 37-0310-1001:** **Well Driller Licensing Rules. Senator Pearce** made the motion, **seconded** by **Senator Siddoway**, for the adoption of this rule. The motion **passed** by unanimous voice vote.
- Docket No. 58-0102-1001:** **Water Quality Standards.** This docket is being held, subject to the call of the Chair.
- Docket No. 58-0117-1001:** **Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. Senator Heider** made the motion, **seconded** by **Senator Cameron**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

Docket No. 58-0123-0901: **Rules of Administrative Procedure Before the Board of Environmental Quality. Senator Cameron** made the **motion, seconded** by **Senator Heider**, for the adoption of this rule. The motion **passed** by unanimous voice vote.

CONCLUSION: **Vice Chairman Bair** said that concluded the review and voting on the Rules for the Resources and Environment Committee. He then turned the meeting back to Chairman Pearce.

Chairman Pearce thanked the Vice Chairman for a job well done. He then announced that the Committee would give consideration to the two Gubernatorial appointees, Robert "Bob" Barowsky and Randall Budge, to the Idaho Fish and Game Commission. Their terms are from June 30, 2010 to June 30, 2014.

MOTION: **Senator Cameron** made the **motion, seconded** by **Senator Stennett**, to confirm the appointment of **Robert "Bob" Barowsky**. The motion **passed** by majority voice vote. Voting nay was Senator Siddoway. The Senator said that he felt his questions were not answered adequately by Commissioner Barowsky during the interviewing process. **Senator Stennett** will be the **floor sponsor**.

MOTION: **Vice Chairman Bair** made the **motion, seconded** by **Senator Heider**, to confirm the appointment of **Randall Budge**. The motion **passed** unanimously by voice vote. **Vice Chairman Bair** will be the **floor sponsor**.

ADJOURN: **Chairman Pearce** thanked the Committee for their hard work, then adjourned the meeting at 2:20 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, January 31, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|----------------------|---|--|
| UPDATE OF ACTIVITIES | Office of Species Conservation Annual Report | Nate Fisher, Administrator, OSC |
| | Office of Species Conservation Wolf Report | Dustin Miller, OSC |
| PRESENTATION | Idaho Council on Industry and the Environment *** Rules, Guidance and Stringency *** | Patricia Barclay, Executive Director, ICIE |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 31, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He welcomed the presenters of today's program and also the audience members.

ANNOUNCEMENTS: The **Chairman** advised the Committee to review the handouts in their blue folders. They consist of a fax from sportsmen in the Bear Lake area; minutes; presentation material from Nate Fisher and Patricia Barclay.

MOTION: **Senator Heider** made a **motion** for the approval of the minutes of January 24, 2011. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

PRESENTATION: **Chairman Pearce** welcomed **Mr. Nate Fisher, Administrator of the Governor's Office of Species Conservation (OSC)**. Before beginning his Power Point presentation, Mr. Fisher introduced his staff that will be assisting him. They included **Crystal Sawyer, Assistant to the Administrator; Dustin Miller, Environmental Liaison (wolf and bull trout); and John Beals, Project Manager (sage grouse)**.

Mr. Fisher gave an overview of the agency's background. He stated that their core functions are as follows: Coordinate federal Endangered Species Act (ESA) programs with state agencies; Solicit, provide and delegate funding for ESA programs; Create de-listing advisory teams; Serve as the State's "one voice" on ESA policy; Serve as the State's ombudsman for Idaho citizens to voice ESA concerns; and Facilitate collaboration between State, federal and private stakeholders.

The current activities of OSC are sage grouse, bull trout, Secretarial Order 3310 - Wildlands, and wolves.

Mr. Fisher then addressed the **sage grouse** issue. On March 5, 2010 the federal government determined that sage grouse is warranted, but precluded for listing under the ESA. The sage grouse covers 11 western states, which includes Idaho. The species' status will be reviewed annually to determine whether it requires listing under the ESA. OSC is collaborating with State, federal and private stakeholders to ascertain the short-term and long-term ramifications of the federal government's determination. OSC is also coordinating policy in response to Bureau of Land Management's sage grouse habitat prioritization efforts. Mr. Fisher then provided a map that showed the sage grouse leks, key sage grouse habitat, perennial and annual grasslands.

Bull trout was the next issue that Mr. Fisher addressed. In January, 2010 the U.S. Fish and Wildlife Services (USFWS) proposed to grossly expand critical habitat for bull trout in Idaho and surrounding states. OSC took the lead in coordinating comments for the State, emphasizing the economic implications of such a vast and far-reaching designation. In October, 2010 USFWS summarily rejected Idaho's comments, and proceeded to designate over 8,772 miles of streams and 170,218 acres of lakes and reservoirs as critical habitat for bull trout in Idaho. This designation has the potential to result in further land use restrictions and environmental lawsuits on activities occurring on federal land near rivers and lakes designated as critical habitat. The Governor is currently exploring his legal options to scale back this unwarranted designation.

The Interior's "Wild Lands" policy (**Secretarial Order 3310**) was explained next. On December 23, 2010 Interior Secretary Salazar issued a "Wild Lands Secretarial Order" expanding Bureau of Land Management (BLM) wilderness planning. The Order directs the BLM to inventory lands that have "wilderness characteristics" and once approved would be managed as de facto wilderness. Through this Order, Interior intends to circumvent public process pursuant to the Federal Land Policy Management Act (FLPMA). This directive has the potential to severely impact multiple uses of BLM land. Only Congress has the authority to designate public land as wilderness. Idaho and other western states are working on a grass-roots effort to stop the implementation of this gross encroachment of State sovereignty.

Mr. Dustin Miller spoke next regarding **wolves**. He said that in August, 2010 Judge Molloy in Montana ruled that the USFWS violated the ESA by delisting wolves in only Idaho and Montana, while leaving wolves in Wyoming under full ESA protection. The governor is currently appealing this ruling to the 9th Circuit. In the fall of 2010, the State attempted to negotiate a new "designated agent status" MOA with the Department of the Interior. The Governor requested additional flexibility, including a public hunting season and additional funds to manage wolves; however, DOI was not amenable to the State's concerns. Consequently, the Governor did not see the benefit of continuing as Fish & Wildlife's designated agent and terminated the State's role in day-to-day management. Idaho's wolf population continues to expand putting livestock and ungulate populations at risk.

WOLVES - Delisting Efforts: Interior's Approach

In November, 2010 Secretary of the Interior Ken Salazar met with the Governors of Idaho, Montana and Wyoming to discuss delisting wolves in the Northern Rockies through Congressional legislation. After several days of negotiations, Governor Otter could not come to an agreement with the Secretary of the Interior's legislative language for the following reasons:

- Department of the Interior was attempting to codify settlement language between Defenders of Wildlife and the State of Montana.
- Legislation would have committed Idaho to managing for at least 500-700 wolves.
- Automatic relisting wolves, could occur if the State was found to be in "significant non-compliance."
- Potential for Idaho's wolves to lose their non-essential experimental status.

WOLVES - Delisting Efforts: Congressional Approach

Following Judge Molloy's decision in August, 2010 several bills were introduced in Congress to delist wolves.

- All wolf bills introduced in the 111th Congress failed.
- With Republican control of the House in the 112th Congress, the political climate may be better suited for legislative approaches to wolf delisting.
- Two new bills were introduced last week, by Denny Rehberg (R-MT). Congressmen Simpson and Labrador are co-sponsors of both.
- Idaho's delegation remains committed to a legislative fix to restore State management of a recovered and robust wolf population in Idaho.

The year end wolf population for 2009 was 835 wolves; 94 packs; and 49 breeding pairs.

WOLVES: Livestock Depredation

Verified wolf depredations on livestock in 2010 were down from those in 2009. Most believe that this is attributed to a successful wolf hunting season of 2009-2010. Unverified losses remain a big problem for livestock producers. Historically, the Defenders of Wildlife paid livestock producers for verified losses, but recently backed out of this commitment. Through new federal funding sources, OSC is now covering verified and unverified wolf related livestock losses.

WOLVES: 10(j) Litigation

In 2008, the 10(j) Rule allows for additional flexibility for the take of wolves; south of I-90, to protect livestock, guarding/herding animals and pets. The 10(j) Rule also allows the State to petition the Fish and Wildlife Service to take wolves if they are having unacceptable impacts on wild ungulates (elk, deer, moose, etc.) On January 28, 2011 Judge Molloy ordered each party to show cause why this case should not be dismissed as moot. Judge Molloy questions whether wolves, south of I-90, should still be classified as non-essential experimental due to known connectivity with fully listed EDSA wolf populations. Should Judge Molloy rescind the NEP status of wolves in Idaho, the State would lose its 10(j) flexibility.

Chairman Pearce announced that the time was up for this presentation; however, the Chairman asked Mr. Miller to give some advice as to how to get "this mess" under control. **Mr. Miller** responded that he thought the best shot they had, at this point in time, was a Congressional fix. He said that he had contacted one of the Congressional delegates and they agreed that a Congressional fix was needed. **Chairman Pearce** thanked Mr. Fisher and his staff for their presentation.

PRESENTERS: Next on the agenda was a presentation on "**Administrative Rules, Policy and Stringency**". **Ms. Patricia Barclay, Executive Director, Idaho Council on Industry & Environment (ICIE)** said the presenters are **Mr. Norm Semanko, Executive Director, Idaho Water Users Association (IWUA)** and **chairman of Environmental/Regulatory Affairs Committee for ICIE**; **Mr. Jack Lyman, Executive Director, Idaho Mining Association (IMA)**; and **Ms. Joan Cloonan, Board member of Department of Environmental Quality (DEQ) and current President of ICIE.**

Prefacing the presentation, **Mr. Norm Semanko**, provided background information regarding ICIE. He stated that ICIE is a nonprofit, non-partisan group established in 1989 to focus the discussion of environmental policy onto science and facts. The mission of ICIE is to facilitate the use of science and facts in shaping public policy on environmental issues.

The purpose of ICIE's Environmental/regulatory Affairs Committee is to: (1) Monitor and report on policy and rulemaking proceedings at the DEQ and other agencies; (2) Monitor and report on activities of the Idaho Legislature concerning environmental issues, with a particular focus on legislative committees responsible for environmental policy matters; (3) Provide as forum for members for on-going discussion and analysis of above proceedings; (4) Provide an opportunity for constructive exchange with DEQ and other agencies; and (5) Provide its members with a collective method of common education, information and advocacy that is consistent with ICIE's mission at DEQ, other agencies and before the Legislature.

PRESENTATION: The first slide of the presentation by **Mr. Semanko** was: **The Idaho Administrative Procedures Act "APA"**.

- Authorizes State agencies to develop (promulgate) rules that have the force and effect of law.
- Rules are recommended by agency directors to agency boards.
- Directors or agency heads promulgate rules where there is no board.
- APA allows persons to petition boards or agency heads to promulgate rules.
- Many rules are the result of negotiated rulemaking.
- The process provides for substantial public input through written comments, meetings and hearings.

WHAT'S A RULE?

- A "rule" means the whole or part of an agency statement of general applicability that has been promulgated in compliance with the provisions of the APA and that implements, interprets or prescribes:

law or policy; or the procedure of practice requirements of an agency.

- It does not include: statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or declaratory rulings issued pursuant to section 67-5232, Idaho Code; or intra-agency memoranda; or any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. Idaho Code 67-5201(19).

THE IDAHO SUPREME COURT in Asarco v. Idaho DEQ provided additional definition of a "RULE". Rules have a wide coverage; are applied generally and uniformly; operate only in future cases; prescribe legal standards or directives not otherwise provided by the enabling statutes; express agency policy not previously expressed; and is an interpretation of law or general policy.

THE APA: Provides the Legislature with the authority to amend, modify or reject rules. Idaho is one of only three states in the nation that has such authority!

SEPARATION OF POWERS? The Idaho Supreme Court in Mead v. Arnell declared that the Legislature's authority to reject rules does not violate the Constitutional doctrine of Separation of Powers, provided that Legislative rejections or rules are based upon a rule being "Contrary to Legislative Intent."

That concluded Mr. Semanko's part of the presentation. Speaking next was Mr. Jack Lyman.

Stringency was the topic of **Mr. Lyman's** part of the presentation.

He said the definition of stringent is imposing rigorous standards of performance; severe. The first stringency provision appeared in 1983 - Idaho Hazardous Waste Management Act (HB 144) and has been repeated in almost every environmental law since then. They include: 1987 - Toxic Substance Control Act (SB 1172); 1992 - The Idaho Solid Waste Facilities Act (HB 778); 1993 - The Idaho Clean Air Act (SB 1284); 1995 - The Idaho Clean Water Act (SB 1284); 1996 - The Idaho Land Remediation Act (SB 1516); and 2002 - Stringency amendments to the Environmental Protection and Health Act {EPHA} (HB 658).

The Board may not promulgate any rule that would impose conditions or requirements more stringent or broader in scope than those established in federal law. Some in the regulated community became concerned that the Department of Environmental Quality was moving without legislative direction to regulate several activities that were not regulated by the federal government. HB 658 required the department to specifically identify any part of a proposed rule that was broader in scope or more stringent than federal law or regulations or was proposed to regulate an activity not regulated by the federal government. House Bill 658 was approved in 2002 and was signed by Governor Dirk Kempthorne.

The next presenter was **Ms. Joan Cloonan** and her topic was **Guidance**. She stated that she would be speaking mainly from the perspective of DEQ's rules, regulations, and guidance.

The Board promulgates rules and rules originate from: statutory requirement; adoption of EPA rules where state has primacy; revisions of antiquated or inadequate rules; requests by regulated community or DEQ to update; formal petitions for rulemaking; or Board requests. A legislatively approved rule or temporary rule has force and effect of law.

Guidance may be any of the following: (1) Written documentation of how an agency interprets a rule; (2) Agency policy; (3) Checklists; (4) Technical background information; (5) Quality Assurance/Quality Control procedures; (6) Treatment method alternatives; or (7) Handbooks or Manuals. Ms. Cloonan said rules tell you where to go and guidance tells you how to get there – it is like a roadmap.

As an example, she used DEQ's Guidance Policy, which is:

- Guidance is guidance, not law.
- Consult with Attorney General's office on whether guidance or rule.
- Obtain Director's approval for guidance document.
- Seek public input on guidance.
- Publish draft guidance.
- Publish final guidance.
- Avoid mandatory language.

That concluded the presentation. Mr. Semanko stated that ICIE is available as a resource and they are all involved in the organization. He announced that the next meeting would address the issue of bull trout. He thanked the Committee for the opportunity to speak to them.

ADJOURN: **Chairman Pearce** thanked the presenters, then adjourned the meeting at 2:50 p.m.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 02, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------------|---|--------------------------------|
| UPDATE OF ACTIVITIES | Idaho Department of Fish and Game | Cal Groen, Director, IDFG |
| PRESENTATION | Office of Performance Evaluations *** Performance Measurements *** | Rakesh Mohan, Director, OPE |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 02, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Werk, and Stennett

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M.

ANNOUNCEMENTS: The Chairman advised the Committee to read the handouts that have been provided to them before the Joint meeting next Monday.

He then welcomed **Mr. Cal Groen, Director, Idaho Department of Fish and Game.**

SPEAKER: **Director Groen** introduced **Mr. Wayne Wright, Chairman of the Fish and Game Commission, and Ms. Kathleen Trever, Deputy Attorney General for IDFG.**

The Director said that Chairman Pearce had given him two questions to address. One is regarding areas with high wolf densities (how are the elk doing and should we be hunting them?) and two - is there any hope in the wolf discussions? Director Groen provided a copy of his talk, which is inserted into the minutes.

TO: Senator Monty Pearce, Chairman Resources & Environment Committee
FROM: Cal Groen, Director

RE: Elk Tag Reductions and Population Management Presentation;
Fish and Game Commission Briefing Statement;
Why Federal Legislation is Needed for State Wolf Management.

Elk Tag Reductions and Population Management Presentation
Background
Elk populations in Idaho are managed based on geographically defined Elk Management Zones (Zone). In the Elk Management Plan revision of 1998 the statewide elk population was estimated at 125,000, current estimate is approximately 103,000 (an 18% decline).

Management of population's within Zones is based on biological objectives set by the Commission. The Department has several management options to adjust harvest on elk populations including, changing season timing, changing season length, weapon restrictions, quotas (also known as caps), and controlled hunts.

Biological objectives for elk populations contain three targets:

- number of cow elk
- number of bull elk
- number of adult bulls

The statewide cap on nonresident elk tags is 12,815. The statewide cap on nonresident deer tags is 15,500 of which 1,500 are restricted to white-tailed deer only.

Elk Population Management

Antlerless (cow) elk hunting opportunities are adjusted based on the elk population's status which is classified as above, meeting, or below the population objective.

When an elk population is below the biological objective set for the Zone- cow elk harvest opportunity is reduced or eliminated through adjustments to season length or timing, or through the reduction or elimination of controlled hunt permits.

When an elk population is above the biological objectives for the Zone, cow elk harvest opportunity is increased by expanding season length, changing season timing, increasing controlled hunt permits, or creation of extra-tag hunts.

When the elk population is meeting the biological objective season structure is usually static.

When the antlered (bull) elk population in a zone is below objective, we establish quotas to limit hunter numbers, adjust season timing or length, or reduce controlled hunt tag numbers.

Elk Management Zone Quotas

A "Quota" (also referred to as a "Cap") is a numerical limit on the number of tags sold in a given elk management zone. Quotas are more restrictive than the general season (where tags are purchased over the counter, unlimited quantity) and less restrictive than a controlled hunt where tags are allocated by lottery. For zones with a Quota, tags are sold on a first-come first-served basis until the cap has been reached. Within a zone quotas are further subdivided for residents, nonresidents, and outfitted hunters. Quotas were first implemented in the Lolo Zone (units 10, 12) in 1998 and are in place in 9 zones.

Tag Reduction vs. Population Decline

Since 1998 Quotas to control bull harvest have been implemented in 9 of the 29 elk management zones. In the four central Idaho elk management zones (Lolo, Selway, Sawtooth, Smoky Mountain) where cow elk are below population objectives, populations have declined from 24,324 elk to 13,220 since the mid-1990s (46% decline in elk population, 11,104 fewer elk). For the four central Idaho elk management zones (Lolo, Selway, Sawtooth, Smoky Mountain) that are not meeting cow elk population objectives cow tags have been reduced from 19,920 to 7,863 since the mid-1990s (a 61% reduction or 12,057 tags).

Proactive Tag Reductions

The Salmon elk management zone has declined from 11,203 elk to 7,743 (31% decline in elk population, 3,460 fewer elk) but the population is still currently meeting the biological objective. However, based on information learned from the other central Idaho Elk Management Zones we have reduced antlerless controlled hunts in the zone and capped the antlered tags in the zone, decreasing the total number of tags available from 4,169 to 2,535 (39% reduction or 1,634 fewer tags).

History of Elk Zone Quotas by Year

| Years | Quota and Controlled Hunt Implementation and Adjustments |
|--------------|--|
| 1996 | 1,900 Antlerless elk controlled hunt tags in Lolo zone units 10, 12 |
| 1997 | 1,850 Antlerless elk controlled hunt tags in Lolo zone units 10, 12 |
| 1998 | Implementation of Elk Zone system 0 Antlerless elk controlled hunt tags in Lolo zone units 10, 12 Lolo B-tag Quota set at 1,600 tags (resulted in a 50% reduction in B-tag hunters) |
| 1999 | Middle Fork Zone unit 27 no general season for B-tags; unlimited controlled hunt for Unit 27 |
| 2000 | Selway B-tag Quota set at 1,255 tags (resulted in a 28% reduction in B-tag hunters) Middle Fork A-tag Quota set at 1,551 tags Middle Fork B-tag Quota set at 1,636 tags |
| 2002 | Dworshak B-tag Quota set at 2,380 tags Elk City B-tag Quota set at 1,790 tags |
| 2003-2007 | No changes to zone quotas |
| 2008 | Selway A-tag Quota set at 647 tags Selway B-tag Quota further reduced to 1,067 tags |
| 2009 | Sawtooth A-tag Quota set at 1,342 tags Sawtooth B-tag Quota set at 2,382 tags Diamond Creek A-tag Quota set at 1,837 tags |
| 2010 | Lolo A-tag Quota set at 404 tags Lolo B-tag Quota further reduced to 1,088 tags Salmon B-tag Quota set to 2,507 tags Sawtooth A-tag Quota further reduced to 953 tags Sawtooth B-tag Quota further reduced to 1,954 tags Smoky Mountain A-tag Quota set to 726 tags |

WHY FEDERAL LEGISLATION IS NEEDED FOR STATE WOLF MANAGEMENT

Summary: There is no biological or management reason to keep wolves in Idaho on the Endangered Species List. Congressional intervention is needed because court decisions and procedural technicalities have not allowed the Endangered Species Act to return a recovered wolf population to state management.

- Federal and state wildlife management agencies, as well as independent scientists, agree Northern Rocky Mountain wolves are biologically recovered; Idaho's wolf population is at least 800% above the federally approved delisting goal. Today's Northern Rocky population grew to its present size of at least 1,500 with the introduction of 70 wolves only 15 years ago.
- The U.S. Fish and Wildlife Service, under both the Bush and Obama Administrations, approved Idaho's 2002 state wolf management plan and supported delisting of wolves in Idaho. Court decisions have not found any fault with this plan.
- Idaho meets all criteria for state management of wolves; Idaho demonstrated responsible management while wolves were delisted during 2009-2010 and conducted an orderly hunt for wolves as big game animals, just like black bears or deer.
- Wolves now overpopulate some areas of Idaho, causing social, biological, and economic adverse effects to the State and its citizens.

- With recovered and increasing wolf populations, the few tools the federal Endangered Species Act provides to respond to the adverse impacts of wolves are inadequate.
- Despite wolves' biological recovery, wolves are being used as surrogates to gain de facto control of key aspects of wildlife and land use management through litigation, without legislative, public, or administrative process.
- Litigation has also eroded commitments and compromises made to support wolf introduction, such as wolf population threshold, ability to address livestock depredations, upholding multiple use, and maintenance of huntable populations of elk, deer, and other game animals. Many of the same groups now challenging delisting and population control previously supported (or did not challenge) compromises made when wolves were introduced in the mid-1990s. Without accountability for these commitments, there will be little incentive for continued participation in ESA recovery by states or private individuals.
- U.S. District Judge Molloy's decision requiring the relisting of wolves reaches an absurd result: even if Montana and Idaho housed 10,000 wolves, the Rocky Mountain wolf could not be delisted without Wyoming's having an approved management plan. This result cannot be what the framers of the ESA intended.

That concluded Director Groen's presentation. Time was allowed for a discussion.

SPEAKER:

Chairman Pearce welcomed **Mr. Rakesh Mohan, Director, Office of Performance Evaluations (OPE)**. Mr. Mohan said he would speak about "Performance Measurement."

In the handout that Director Mohan provided to the Committee, it states that good government is not possible without an effective accountability system - citizens need performance reporting to hold their government accountable. Report cards, results, and benchmarks are all part of performance reporting.

Performance information can also be used by lawmakers in making policy and budget decisions, by program officials to monitor government programs in a systematic way, and evaluators to assess efficiency and effectiveness of government policies and programs.

Policymakers' intent for a public policy is not always clear in the authorizing legislation. Often multiple interpretations of the policy intent exist among legislators, program officials, and stakeholders. In a worst-case scenario, these interpretations are distinctly different. For effective implementation of a public policy, the desired scenario would be to have one single interpretation of the intent.

Incorporating performance measurement concepts into the policymaking process can help clarify legislative intent of a policy before its implementation. Once the intent is clarified, the next step is to discuss policy goals and performance expectations. Both policymakers and those responsible for implementing the policy should have a common understanding of what is doable, what is not, and at what cost.

Following the release of the agency's 2004 report, *Strategic Planning and Performance Measurement*, the Legislature revised the state's process for reporting performance information by unanimously passing House Bill 300, which became law on July 1, 2005 (Idaho Code 67-1901 to 1903). The legislation strengthened Idaho's performance reporting process by requiring state agencies to do the following:

- Submit an agency profile, which includes an overview, core statutory functions, key services provided, and performance highlights.
- Submit accurate and meaningful performance information, which contains key indicators, benchmarks, and explanations.
- Present (orally) performance information to germane committees each year.

In addition, the revised process provides a formal opportunity for policymakers and program officials to engage in an ongoing dialogue with each other to clarify policy intent, goals, and performance expectations. Policymakers can also let program officials know whether the performance information is useful for accountability and policymaking purposes.

Director Mohan then reviewed the "Top Ten List" for effective performance measurement. They are as follows:

1. Know that performance measurement is inherently a political process - include stakeholders, define what would constitute program success, and agree on the cost of measuring success.
2. Keep the performance measurement process simple, understandable, accessible, and affordable.
3. Use performance data, along with other information, to make policy, budget, and program decisions.
4. Use performance measurement to trigger questions, not necessarily to find all of the answers.
5. Set multi-year performance goals and targets.
6. Provide context to performance data.
7. For external reporting, use a few select measures that reflect program efforts and accomplishments relating to legislative intent.
8. For internal reporting, use measures that help program managers systematically monitor the program's progress.
9. Review and question the quality of information reported.
10. Provide training on reporting and using performance information.

Using the 2012 Performance Measurement Report for the Department of Environmental Quality, Director Mohan went over the performance measures, then the performance analysis. The benchmark performance measures will continue to be representative of the agency's progress toward achieving the overall goal of protecting human health and the environment.

ADJOURN:

Chairman Pearce thanked Mr. Mohan for his presentation, then adjourned the meeting at 3 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

JOINT
SENATE RESOURCES & ENVIRONMENT COMMITTEE
AND
HOUSE RESOURCES & CONSERVATION COMMITTEE
1:30 P.M.
WW 02 (Auditorium)
Monday, February 07, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------|-------------------------------|--|
| ATV's | Briefing on current ATV rules | Randy Budge, F&G Commissioner; Jerome Hansen, IDFG |

The Joint Committee will hear testimony as it
pertains to Senate Bill 1015 and Senate Bill 1016,
but no action will be taken on the Legislation.

Testimony may be limited.

***If you have written testimony, please provide a copy of it to the committee
secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce

Vice Chair Bair

Sen Cameron

Sen Siddoway

Sen Brackett

Sen Heider

Sen Werk

Sen Stennett

COMMITTEE SECRETARY

Juanita Budell

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MINUTES
JOINT MEETING
SENATE RESOURCES & ENVIRONMENT COMMITTEE
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Monday, February 07, 2011

TIME: 1:30 P.M.

PLACE: WW 02 (Auditorium)

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Brackett, Heider, Tippets, Werk, and Stennett

Chairman Stevenson, Vice Chairman Shepherd, Representatives Wood, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood, Boyle, Hagedorn, Harwood, Vander Woude, Wheeler (Gibbs), Pence, Higgins, and Lacey

ABSENT/ EXCUSED: Senator Siddoway

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Stevenson** called the Joint meeting to order at 1:30 P.M. and welcomed the audience members.

ANNOUNCEMENTS: He announced that there would be no voting on the two bills (S 1015 and S 1016) that are before the Committee. Voting will take place at a later date by the Senate Resources & Environment Committee. Due to the number of people wanting to testify, testimony will be limited to three minutes. He then asked Senator Corder, sponsor of the bills, to explain the purpose of the legislation.

SPEAKER: **Senator Corder** said he was pleased to bring S 1015 and S 1016 before the Joint Committee. He stated that he would like to explain the goal and intent of this legislation. The Legislature empowers Commissions to do specific tasks, but there are times when issues that come before those Commissions are really the peoples' job. He feels these bills represent that debate. Senator Corder then gave an example: A person on an ATV, going down a trail that is open and not hunting, can drive down that trail, as well as campers, bird watchers, etc. A person who is on an ATV and is hunting cannot drive down that trail. He feels this is a basic inequity and therein lies the debate and asked the questions, "Shall it be the policy of the State to treat people with those kinds of vehicles with that kind of inequity and is it the policy of the State that game management be a part of vehicle management?"

S 1015:
S 1016:

Senator Corder said that is the view of the Mountain Home ATV Club, as well as state associated clubs, and they are anxious for a decision.

SPEAKER: **Chairman Stevenson** then called on **Commissioner Randy Budge, Idaho Fish and Game Commission**, to present the views of the Commission regarding S 1015 and S 1016.

Commissioner Budge is from Pocatello and spoke against the proposed legislation on behalf of the Fish and Game Commission, as well as the Idaho Department of Fish and Game. He stated that the Commission is not opposed to "4 wheelers" in any way. The motorized vehicle rule that was first enacted in 2002 was not an Act to restrict or limit one's right to ride a 4 wheeler.

It is simply the use of 4 wheelers as an "aid to hunting." The Act is part of the statutory authority given to the Commission to regulate "aids to hunting." He gave examples of regulating the use of dogs that hunt bear and mountain lions. The Commission also regulates the use of airplanes for hunting. Commissioner Budge stated that it is a rule that has been misrepresented by many and has caused some confusion by many; however, he feels it is a simple rule. It provides that in areas where the motorized vehicle rule has been enacted, and that is in 31 of the 99 hunt units that the State has and all are south of the Salmon River, it provides that vehicles will be used on existing roads and trails where full-sized motorized vehicles can operate lawfully. The vehicles are not to be driven off the existing roads and trails.

Commissioner Budge said that there are three fundamental purposes for the rule. (1) To deal with conflicts they have between hunters who use 4-wheelers and hunters who do not; (2) To manage the resource; and (3) To maintain the quality of the big game. He stated that this is one of many tools that they have available to utilize. This rule helps the Department to manage wildlife in order to protect, preserve, and perpetuate the wild life. There are exceptions to the rule. The rule does not apply if one is retrieving game, a disabled permit holder, or taking in or taking out camp equipment.

He then asked the question -"What would happen if there was not a rule in place?" The answer was that there would be a substantial increase in conflicts between hunters. Also, a number of other types of restrictions that would reduce over-all opportunities would be imposed. "The Commission takes their job very seriously, does their homework, and are passionate about what they do," stated Commissioner Budge. If they don't have the rule, he feels it would be an intent to undermine the authority, credibility, and ability of the Department and the Commission to do their job. And for those reasons, they oppose the legislation.

A definition of "what is an aid to hunting?" was requested. Commissioner Budge said there is a definition in the rule itself, which he doesn't have the exact language at the moment, but it comes down to common sense judgement by the officer. He stated that last year of the citations given, less than one percent (1%) pertained to violations of this motor vehicle rule.

Chairman Stevenson thanked Commissioner Budge for his testimony. He then announced that due to the number of people wishing to testify, testimony would be limited to three minutes.

TESTIMONY: **Neill Goodfellow**, Fruitland, was the first to testify and is in favor of S 1015 and S 1016. He feels that he was mislead by officers of IDFG as to off-road vehicle use. The USFS and BLM's rules supercede Idaho's rules and game cannot be retrieved by the use of 4 wheelers due to their road closures.

TESTIMONY: **Danny Cone**, also from Fruitland, feels the Fish and Game have a secret agenda and supports S 1015 and S 1016.

TESTIMONY: **Lew Pence**, Gooding, provided a copy of his testimony, which is on file. He feels that there has been gross misuse by ORVs and does not support the bills. He stated that if this legislation is passed, it would really cripple the ability of the Commission and Department to effectively manage the state's big game.

TESTIMONY: **Ernest Lombard**, Soda Springs, representing himself, provided pictures of damage done to his property by hunters with large rigs pulling trailers. He spoke in favor of the two bills.

TESTIMONY: **Tom Glass**, Boise, stated that Mr. Lombard covered his thoughts and did not testify.

TESTIMONY: **Ron Stricklin**, Boise, said that IDPR, USFS, and BLM should manage the roads, not IDFG.

- TESTIMONY:** **Chris Hunt**, Idaho Falls, opposes S 1015 and S 1016 because of the misuse of off-road vehicles in the back country.
- TESTIMONY:** **John Romero**, Boise, asked that IDFG's ability to make decisions not be taken away.
- TESTIMONY:** **David Claiborne**, secretary of the Idaho State ATV Association, said their organization supports the legislation, as well as a coalition of ATV, UTV and motorcycle users throughout the State of Idaho, representing over 2,500 members. They feel that IDFG's rules are nothing more than an effort to close roads and trails to certain people. A copy of his written testimony is on file.
- TESTIMONY:** **Adena Cook**, representing the BlueRibbon Coalition (BRC), is a nationwide organization representing 600,000 motorized recreationists, equestrians, mountain bike enthusiasts and resource users who enjoy recreational access to federal lands. They strongly support the two bills. A copy of her testimony is on file.
- TESTIMONY:** **Grant Simonds**, Executive Director for Idaho Outfitters & Guides Association, said it is a statewide non-profit business trade organization. He provided a copy of his testimony, which is on file.
- He stated that "the Idaho hunt outfitting industry and the associated rural economy have been hit hard by uncontrolled wolf predation since reintroduction of the experimental, non essential wolves in 1995. The number of outfitted hunters has dwindled from 4,902 in 1990 to 1,161 in 2009, a 320 percent (320%) decline. We have a number of hunt outfitters who operate in management units with the non-motorized rule, and we have outfitters who utilize ORV's in their operations according to the existing rule."
- Mr. Simonds also said that it is important to note that the existing rule allows for hunters to pack in and pack out camps and retrieve game, but does not allow for hunting from ATV's. It appears there is a certain amount of misunderstanding of the rule. In closing, he urged elected leaders to allow the IDFG to continue to keep its existing motorized rule in place.
- TESTIMONY:** **Mark Sauerwald**, said that many of his talking points had already been covered in previous testimony. He supports the two bills.
- TESTIMONY:** **Haden Claiborne**, Boise ATV Trailriders Association president, said their club has approximately 100 members and its purpose is to educate ATV riders on how to use ATVs responsibly when they travel on public lands. It includes safety training and first aid, among other things. They are in support of the bills.
- TESTIMONY:** **Fred Confer**, Caldwell, outdoorsman and hunter, is opposed to S 1015 and S 1016. He stated that he prefers to hunt in areas for big game that have motorized vehicle restrictions.
- TESTIMONY:** **Angela Rossward**, said that her concerns have been addressed.
- TESTIMONY:** **Fred Dixon**, stated that his concerns have been addressed also, but wants to go on record as being opposed to the legislation.
- TESTIMONY:** **Chuck Wells**, Fairfield, said that he is part of the one percent (1%) that Commissioner Budge mentioned about citations and he is not happy at all. He had obtained a map of the area, but wasn't told he needed an addendum to the map, so was cited.
- TESTIMONY:** **Rich Bohmer** stated that his views have been addressed.
- TESTIMONY:** **Chuck Hoovestol**, Boise, testified in support of the two bills.

TESTIMONY: **Herbert Pollard**, Boise, was not in favor of S 1015 and S 1016. During his testimony, he stated that "he believes that the proposed legislation would promote unethical behavior and make it more difficult to prosecute illegal activities." On behalf of his grandchildren, he urged the Committee to "not send this legislation forward." A copy of his written testimony is on file.

TESTIMONY: **Carl Pence**, asked the question - "Why would the State Legislature want to keep the Department of Fish and Game and the Fish and Game Commission from being able to promulgate rules and regulations regarding one of the most significant human activities affecting wildlife habitat, wildlife migratory patterns, and recreational hunting quality?" He stated that the human activity he was referring to is the use of motorized vehicles, including all-terrain vehicles, utility type vehicles, and off-highway vehicles. Mr. Pence is educated in wildlife biology and understands the stress such activities place on elk as they begin to face the long winter months. He is in opposition of these bills. A copy of his testimony was submitted and is on file.

TESTIMONY: **Craig Mickelsen**, representing the Idaho Conservation Officer's Association, said that they strongly oppose S 1015 and S 1016 and feel they impede the role of Idaho Fish & Game to manage game populations. He said the current Idaho Fish & Game motorized vehicle rule does not affect nor restrict non-hunting Off Highway Vehicle users. A copy of his testimony was submitted and is on file.

WRITTEN TESTIMONY: Written testimony was submitted by **Brad Smith**, Conservation Associate, Idaho Conservation League, opposing the bills and it is on file.

WRITTEN TESTIMONY: Written testimony was submitted by **Stan Mai**, President, Magic Valley ATV Riders, Inc., supporting the legislation, as drafted, and is on file.

ANNOUNCEMENTS: **Chairman Stevenson** announced that the Committee members have been given a packet of emails and letters that have been sent to him and Chairman Pearce and to use them for future reference. Also, **Representative Hagadorn** announced that he has provided a copy of Title 49-426 for reference. **Representative Pence** provided written testimony from **Bob Josaitis**, **Gooding**, who is opposed to S 1016.

ADJOURN: The meeting was adjourned at 2:55 p.m.

Senator Pearce
Chairman

Juanita Budell
Secretary

Representative John Stevenson
Co-Chair

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 09, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------|--|-----------------|
| RS20276 | Will provide a means for drainage districts to consolidate. | Chairman Pearce |
| HEARING | Confirmation hearing of C. Wayne Hunsucker to the Outfitters and Guides Licensing Board to serve a term commencing April 20, 2010 and expiring April 20, 2013. | |
| HEARING | Confirmation hearing of Tom Long to the Outfitters and Guides Licensing Board to serve a term commencing April 20, 2010 and expiring April 20, 2013. (via telephone) | |
| HEARING | Confirmation hearing of Thomas M. Crimmins to the Park and Recreation Board to serve a term commencing July 1, 2010 and expiring July 1, 2016. | |
| HEARING | Confirmation hearing of Randy K. Doman to the Park and Recreation Board to serve a term commencing August 19, 2010 and expiring June 30, 2014. | |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippetts
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 09, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippets, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. The first order of business was to approve some minutes.

MOTION: **Vice Chairman Bair** made a **motion** for the approval of the minutes of January 28. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Brackett** made a **motion** for the approval of the minutes of January 31. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

INTRO-DUCTIONS: The **Chairman** welcomed and introduced **Mr. Jake Howard, Executive Director of the Outfitters and Guides Licensing Board**, who in turn introduced his Board and staff members. They were **Louise Stark, Alex Irby, Wayne Hunsucker, Chris Korell, and Lori Thomason**.

The purpose of today's meeting is for the hearings of the Gubernatorial appointments. **Tom Long, Eagle, Idaho and C. Wayne Hunsucker, Lucile, Idaho are being reappointed to the Outfitters and Guides Licensing Board.** Their terms are from April 20, 2010 to April 20, 2013. First to be interviewed was Mr. Long.

APPOINTEE TELEPHONE INTERVIEW: Mr. Long is in Chile where he operates a business during the winter months and was interviewed by telephone. Due to incomplete paperwork, it was requested of **Chairman Pearce** to ask **Mr. Long** the following questions (which are on the "Gubernatorial Appointment Confirmation Information Form" sent out by the Governor's Office): His responses are underlined.

GENERAL

1. Have you ever been elected or appointed to any public office in this state? If yes, state the office, title, date of election or appointment, and level of government.
Served on Licensing Board for the past three years.
2. If this is a re-appointment to a board, commission or other position on which you currently serve:
 - a. How frequently were meetings scheduled? Four to five times a year;
 - b. To the extent you are able, list any regularly scheduled meeting that you missed during the last two years and the reason(s) for your absence(s).
Missed one meeting.

QUALIFICATIONS

3. Although it may or may not be required for this appointment, describe:

- a. Any degree, professional certification, or designation you have received related to the subject matter of this appointment: No;
- b. Any work or personal experience you have in the subject area of concern to the position to which you have been nominated. Professional guide; outfitting for 35 years; holds certification; trainer for first aid; certified to teach Rescue 3, both technical rope aspect and all river safety elements; and certified as physical trainer.

BACKGROUND

4. Has any court, administrative agency, regulatory body, professional association, disciplinary committee, or other professional group found that you committed a breach of ethics, participated in unlawful discrimination, or participated in any unprofessional conduct? If yes, please explain. No.

5. Have you ever been found guilty of, pled guilty to, or received a withheld judgment for a felony violation of any federal or state law? If yes, please state the details and dates. No.

6. Within the last five (5) years, have you been found guilty of, pled guilty to, or received a withheld judgment for a misdemeanor violation of any federal, state, county, or local law, regulation, or ordinance resulting in a jail sentence (actual or suspended) or fine in excess of \$500? If yes, please state the details and dates. No.

7. Are you now under charges for any violation of law? If yes, please state the details. No.

CONFLICTS OF INTEREST

8. Are you, or have you ever been, a registered lobbyist in the state of Idaho? If yes, please state details and dates. No.

9. In the last five years, have you had any business relationship, dealing or financial transaction, whether for yourself or on behalf of a client or family member, which you believe may constitute an appearance of impropriety or conflict of interest with the position to which you have been nominated? If yes, please explain. No.

10. Do you, a family member or a client have any direct or indirect financial or personal interest (such as business or financial investments, property holdings, or employment), except as a consumer, in the subject area of concern to the position to which you have been nominated? If the answer is "yes", please state the details and explain how do you expect to handle it when (and if) those conflicts arise? No.

POLITICAL AFFILIATION

11. If it is a statutory precondition of this appointment, please identify any political party that you are now or have been affiliated with. Republican.

That completed the questioning of Mr. Long. From an earlier "bio" provided by him, it states that he has been involved in the river outfitting community when he began Cascade Kayak School in conjunction with Cascade Raft Company on the Payette River. Each year Cascade Raft and Kayak sponsors the Police Raft Along program, providing 800 kids and police officers a rafting trip to help bridge the gap between these two groups. The company has grown to become a thriving family business with Tom's three sons, three daughters-in-law, and wife all involved with the management of the company.

APPOINTEE:

Mr. C. Wayne Hunsucker, Lucile, Idaho, also re-appointed to the Outfitters and Guides Licensing Board, was interviewed next. Information from his bio is as follows: He has over 32 years of architectural experience. After completing his Bachelor of Architecture, with distinction, at the University of Arizona, he joined the Boise, Idaho firm of Hummel Architects in 1976. He became a principal in 1978. He continued as a principal in Hummel Architects until June 1, 2005 when he left the firm and formed CWH Architects, PS.

In his 30+ years of practice in architecture, Mr. Hunsucker gained valuable experience in numerous public and private project types. The largest project he was responsible for was the \$51 million dollar Benton County Justice Center Expansion Project in Kennewick, Washington.

Mr. Hunsucker's portfolio includes a wide range of projects including correctional, medical, light industrial, commercial, defense, and housing projects for Washington, and the United States Postal Service.

Education:

- Bachelor of Architecture with Distinction, University of Arizona, Tucson, Arizona
- Bachelor of Fine Arts, The College of William and Mary, Williamsburg, Washington

Registration:

- Licensed in Idaho, Washington, and Nevada. Maintains a NCARB Certification

Professional Affiliations:

- Idaho Outfitters and Guides, Licensing Board Member
- Ada County Historical Preservation Society, Past Board Member
- Central Section, Idaho Chapter of the American Institute of Architects, Past President
- Idaho Chapter, American Institute of Architects, Past President

Honors and Awards:

- Department of Air Force, "Excellent in Design", Youth Center Addition & Remodel, MHAFFB, Idaho
- Department of Air Force, "Citation Award for Concept Design", Improve Appropriated Military Family Housing, MHAFFB, Idaho
- The AIA Scholastic Award and School Silver Medal, University of Arizona
- "Who's Who in America" Biography

Mr. Hunsucker is an avid fisherman and enjoys hunting and most outdoor activities. He has owned a whitewater jet boat and fished the Idaho Rivers for over 25 years.

A question was asked of **Mr. Hunsucker** as to what he felt were issues facing the Board. He responded by saying that they are dealing with several issues, such as water fowl and turkey hunting issues throughout the state and the Board is trying to identify any areas of potential problems. There was an inquiry as to how the economy has affected the guides and outfitters business. Mr. Hunsucker stated that in some areas, they are down as much as 30% to 50%.

Vice Chairman Bair asked if the Board was considering a fee increase in the near future and the response was yes - not a huge one - but enough to maintain the budget. They are faced with more demands and increased costs. Also, an enforcement staff is necessary because of the illegal outfitters. Mr. Hunsucker said they have worked the past three years on a bill, cooperating with the IOGA, and making some compromises that they think will carry them through the next five years. He indicated that the membership of their organizations have been notified and they have also given a number of presentations regarding the fee increase.

Chairman Pearce thanked Mr. Hunsucker for appearing before the Committee and said that voting would take place at the next meeting.

He then welcomed **Mr. Thomas M. Crimmins** of Hayden Lake, Idaho who was appointed to the Park and Recreation Board to serve a term commencing July 1, 2010 and expiring July 1, 2016.

Mr. Crimmins attended Modesto Junior College from 1961 to 1963 and graduated with an AA degree. From 1964 to 1966 he attended Humboldt State University and earned a B.S. in Forest Management. For the next eight years, he held various entry level positions with the U.S. Forest Service. He then was Land Management Planner for USFS from 1974 to 1977; District Resource Officer from 1977 to 1987; Regional OHV/Trails Coordinator from 1987 to 1998, retiring from USFS on January 2, 1998. His education and employment was in the state of California. Since 1998, Mr. Crimmins has been in the consulting business.

During the questioning, he was asked if there could be a conflict of interest as a private consultant dealing with OHV issues. Mr. Crimmins responded by saying that he would abstain from discussing or voting on any project in Idaho where he may have any direct or perceived involvement as a consultant.

TESTIMONY: **Senator Broadsword** testified in support of Mr. Crimmins. She said that she appreciated his attitude and ability to work toward the community's common goals, and feels he will be a wonderful advocate for Region 1 on the State Parks and Recreation Board

APPOINTEE: **Mr. Randy K. Doman**, Cottonwood, Idaho was the last appointee to be interviewed. His appointment to the Park and Recreation Board is from August 19, 2010 to June 30, 2014.

Mr. Doman is an Idaho native who was born in Minidoka County and raised in Cassia County. His first 13 years were spent on a farm/ranch north of Oakley, Idaho. He attended school in Oakley through the 7th grade. His family moved to Burley where he finished high school. He then attended Brigham Young University and has earned credits at the University of Idaho, University of Montana and University of Arizona. He has lots of college credits, but no formal degree. While attending college, he worked seasonally for the U.S. Forest Service fighting fires on the Sawtooth Interregional Fire Crew. Mr. Doman received a permanent appointment to the USFS and began a 32 year career in wildland fire management.

He had several fire management jobs including Interregional Fire Crew Foreman, District Fire Management Officer, Forest Fuels Specialist, Deputy Clearwater-Nez Perce Zone Fire Staff Officer and Zone Fire Staff Officer. He also served on Type I Incident Management Teams for 20 years, as Division Supervisor, Branch Director, Operations Section Chief and Fire Behavior Analyst. Mr. Doman started the first Fire Use Management Team for the Northern Rockies Region and also served as a Type II Incident Management Team Incident Commander. After retirement from the USFS in 2003, he was an Idaho County Commissioner for four years serving as chairman of the Board. Currently, he serves on the Coeur d'Alene Recreation Resource Advisory Committee (RAC) for the Coeur d'Alene Bureau of Land Management, on the North Central Idaho Forest Service Resource Advisory Committee (RAC), as well as the Clearwater Basin Collaborative.

Mr. Doman and his wife, Laurie, own a small ranch near Cottonwood that keeps them busy. They operate a dog boarding kennel, raise alfalfa hay, train a few quarter horses for cutting and fatten a few head of cattle.

Chairman Pearce asked Mr. Doman if he has any new ideas for the Department. **Mr. Doman** responded by saying that he wanted to commend the Board and Director Merrill for all their innovative ideas. They are faced with complex issues and he stated that he is looking forward to the challenge.

The Chairman thanked all the participants and said that concluded the hearings. Voting will be held at the next meeting.

**INTRO-
DUCTION:**

Chairman Pearce introduced **Senator John Tippetts** and asked him to say a few words. He is the newest member of the Committee and was appointed to fill the vacancy of former Senator Robert Geddes, who was appointed as Chairman of the Idaho Tax Commission.

Senator Tippetts said he is from Bennington, which is north of Montpelier, in Bear Lake County. He and his wife have nine children, including two sets of twins. His work takes him to Soda Springs, which is in Caribou County. He previously served in the House, but resigned in the middle of his sixth term, due to his responsibilities of employment. Senator Tippetts said that he is looking forward to the issues facing the Resources Committee and feels privileged to serve.

REPORT:

The Chairman then asked **Director Nancy Merrill, Department of Parks and Recreation**, to provide a short update about what is going on with the Department.

The Director said that state parks play a huge part of the local economy throughout the state. They are readily engaged to keep all the parks open and looking for innovative ways of funding and bringing revenues to the state. She feels that even with the fee increases, people and families will still be able to afford the parks. They know they have lots to do; however, she praised the staff; has a lot of great ideas; and the support of the Board, with all pulling together. It is anticipated that visitor numbers will be up this year, as people are staying closer to home.

REPORT:

Mr. Jake Howard, Executive Director, Outfitters and Guides Licensing Board, gave a brief report regarding his agency. A fee increase has been requested and the bill is moving forward in the House. A growing problem for his agency is the unlicensed outfitter; however, OGLB works closely with state law enforcement agencies, IDFG, and the County Sheriffs' offices and prosecutions are done through the County Prosecutors of Idaho. Streamlining of licensing has taken place over the last three years and part-time help that was previously needed has been eliminated. Another cost-saving measure being considered is the moving of their headquarters to the Parks and Rec building. This would help both agencies.

RS 20276:

Chairman Pearce gave the gavel to **Vice Chairman Bair** so that he could present RS 20276.

This RS will add a provision to the Idaho drainage district law to provide a means for drainage districts to consolidate. The method of consolidation using the court system provided in the bill is similar to the existing method of forming such drainage districts. There is no known fiscal impact on the state general fund. There was a short discussion prior to the motion for printing.

MOTION:

Senator Tippetts made the **motion** to send RS 20276 to the floor for printing. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

Vice Chairman Bair returned the gavel to Chairman Pearce.

The Chairman announced there was one more set of minutes to be approved.

MOTION: **Senator Stennett** made the **motion** for the approval of the minutes of January 26, 2011. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

ADJOURN: The meeting was adjourned at 2:30 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 14, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--------------------------------|--|--|
| PRESENTATION | Bridge, Energy, Oil & Gas Report | Steve West, President, Centra Consulting Inc. |
| <u>RS20323</u> | Joint memorial to ask federal government for re-authorization of the Secure Rural Schools & Self Determination Act or fund another tool to meet the financial commitment. | Senator Keough |
| <u>HCR 003</u> | Resolution to authorize the Legislative Council to continue an interim committee to undertake studies of natural resource issues, particularly those water resources of the state. | Representative Stevenson |
| VOTE | Committee consideration for the Gubernatorial appointment of C. Wayne Hunsucker to the Outfitters and Guides Licensing. | |
| VOTE | Committee consideration for the Gubernatorial appointment of Tom Long to the Outfitters and Guides Licensing. | |
| VOTE | Committee consideration for the Gubernatorial appointment of Thomas M. Crimmins to the Park and Recreation Board. | |
| VOTE | Committee consideration for the Gubernatorial appointment of Randy K. Doman to the Park and Recreation Board. | |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce

Vice Chair Bair

Sen Cameron

Sen Siddoway

Sen Brackett

Sen Heider

Sen Tippets

Sen Werk

Sen Stennett

COMMITTEE SECRETARY

Juanita Budell

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 14, 2011
TIME: 1:30 P.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett
ABSENT/EXCUSED: None
NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. and welcomed everyone to the meeting.
MOTION: **Senator Siddoway** made a **motion** for the approval of the minutes of February 2, 2011. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote.
SPEAKER: **Chairman Pearce** welcomed **Mr. Steve West, President, Centra Consulting Inc.**, who gave an overview of "Bridge Energy, Oil & Gas Report".

The work is being conducted in Payette County and southwest Idaho. Bridge Energy, in partnership with Paramax, has been moving forward by drilling 11 wells in Payette County. Two of the wells did not turn out as they had hoped, but the remaining nine wells hold great potential as being the first gas producing field in Idaho. Mr. West said they are working now at looking at some of the technical issues associated with bringing those wells into production. That is the primary focus of the presentation that will be given. This project has the potential of generating revenue for the state of Idaho.

Mr. West introduced **Ms. Kim Parsons, manager of exploration for Bridge Energy** and **Jody West, who is in charge of land acquisition for Bridge Energy**. Ms. Parsons will give an overview of how they are proceeding on well drilling, as well as talk about "hydraulic fracturing".

SPEAKER: **Ms. Parsons** said there are three main topics - Operations Update, Discussion on Frack, and Aquifer Environmental Protection. The two key points are (1) They are proposing three percent of the volume of the large shale fracks and (2) protect subsurface aquifers and surface operations.

In southwestern Idaho, records from the 1900's indicated there were 70 wells had been drilled and were less than 2,000 feet. There was no economic production. Bridge Energy has spent over \$20 million in operations in southwest Idaho, mostly under the mantle of leasing - over 100,000 acres. In 2010, they drilled 11 wells in Payette County and these were the first wells drilled in 25 years.

Four were unsuccessful, seven are completed as gas wells, and three of those are capable of economic production. Four wells need additional treatment. They require stimulation through a process called hydraulic fracturing, or "fracking." In the summer, pathways near the bore holes get clogged and prevents the gas from flowing. A mixture of gel and sand is injected at high pressure into the formation to clean out the reservoir near the well bore. The process has been used for more than 60 years, but has become controversial since a new technique - horizontal fracking- has been developed to increase production in shale deposits.

Environmentalists fear that fluids or wastewater from the process could pollute drinking water supplies. The Environmental Protection Agency is now studying its safety in shale drilling.

Time was allowed for a question and answer period. **Chairman Pearce** thanked the presenters for their program and said there was some business to come before the committee.

RS 20323: **Senator Keough** presented this Senate Joint Memorial to the Committee. She said the purpose was to ask the federal government for re-authorization of the Secure Rural Schools & Self Determination Act or fund another tool to meet the financial commitment. Without these payments, Idaho will lose more than \$34 million every year, most of which are spent on programs and services that the state cannot replace.

MOTION: **Vice Chairman Bair** made the **motion** to send RS 20323 to the floor for printing. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

HCR 003: **Chairman Stevenson of the House Resources & Conservation Committee** presented this House Concurrent Resolution. If passed, it would authorize the Legislative Council to continue an interim committee to undertake studies of natural resource issues, particularly those water resources of the state.

MOTION: **Senator Siddoway** made the **motion** to send HCR 003 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** unanimously by voice vote.

Chairman Pearce said the next order of business would be to vote on the four Gubernatorial appointees that appeared before the Committee on February 9.

MOTION: **Senator Cameron moved** to send the gubernatorial appointment of **C. Wayne Hunsucker** to the **Outfitters and Guides Licensing Board** to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Bair seconded** the motion. The motion **passed** by unanimous voice vote. The **floor sponsor** will be **Senator Nuxoll**.

MOTION: **Senator Siddoway** moved to send the gubernatorial appointment of **Tom Long** to the **Outfitters and Guides Licensing Board** to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Bair seconded** the motion. The motion **passed** by unanimous voice vote. The **floor sponsor** will be **Senator Winder**.

MOTION: **Senator Siddoway** moved to send the gubernatorial appointment of **Thomas M. Crimmins** to the **Park and Recreation Board** to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Bair** seconded the motion. The motion **passed** by unanimous voice vote. The **floor sponsor** will be **Senator Broadsword**.

MOTION: **Senator Werk** moved to send the gubernatorial appointment of **Randy K. Doman** to the **Park and Recreation Board** to the floor with the recommendation that it be confirmed by the Senate. **Senator Stennett seconded** the motion. The motion **passed** by unanimous voice vote. The **floor sponsor** will be **Senator Werk**.

ADJOURN: **Chairman Pearce** thanked the Committee for all their work and also thanked the participants in today's meeting. The meeting was adjourned at 2:35 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 16, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------------|--|--|
| <u>H 41</u> | Amends existing law relating to underground storage tanks to provide for certain monetary penalties for specified violations | Orville Green, Administrator, Waste & Remediation Division, DEQ |
| <u>S 1077</u> | Provide a means for drainage districts to consolidate | Matt Faulk, Lawyer |
| REPORT | Annual report/update of the Northwest Power and Conservation Council (NPCC) | James Yost, Council Member |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce

Vice Chair Bair

Sen Cameron

Sen Siddoway

Sen Brackett

Sen Heider

Sen Tippets

Sen Werk

Sen Stennett

COMMITTEE SECRETARY

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 16, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: The meeting was called to order by **Chairman Pearce** at 1:30 P.M.

ANNOUNCEMENTS: He announced that there were several items in the blue folder that should be of interest to the Committee members. It consists of a letter from Joe Cook, Mayor of New Plymouth, regarding the drilling in that area; letter from Beau Ziemer, Public Works Superintendent, New Plymouth, regarding the same issue; the AG's response to Senator Werk concerning S 1077; and a colored map and remarks from Mr. Matthew Faulks who will present S 1077 later in the meeting. In the red folder are copies of the two bills that will be heard today, S 1077 and H 41.

MOTION: **Senator Cameron made** a motion to reflect in the minutes that Senator Keough's RS 20323 (heard on 2/14/11) was sent directly to the floor, rather than to be returned to the Committee, as previously indicated. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

Chairman Pearce welcomed **Mr. Orville Green, Administrator of the Waste & Remediation Division for DEQ**. He will present H 41.

H 41: **Mr. Green** stated that Director Hardesty could not attend today's meeting due to representing that agency at Melba for "Capitol for a Day", with the Governor and other dignitaries.

House Bill 41 has to do with the Idaho Underground Storage Tank Act (Title 39, Chapter 88, of the Idaho Code) was passed into law in 2007 and has the stated intent "to establish a state underground storage tank program." In order to receive EPA approval of the State program, the penalty provisions in Idaho Code must meet the minimum penalty requirements of federal law. Lining up the penalty requirements is one of the final steps the State must take to fulfill the intent of the Idaho Underground Storage Tank Act.

Mr. Green said they propose to amend Chapter 88 to mirror the federal penalty requirements for the underground storage tank program, which consist of a maximum \$5,000 per day per tank for continuing violations, and a maximum of \$5,000 for a single violation, which will enable the EPA to give Idaho program approval. Underground storage tank owners and operators are already subject to the specified penalty amounts by EPA. Current State penalty amounts are \$1,000 per day for continuing violations; \$10,000 for a single violation.

With this change, the Idaho program will be eligible to receive program approval

from EPA. That would allow Idaho to operate the program and this is the last step Idaho needs to take before receiving program approval from EPA.

Senator Heider inquired as to whom this rule would apply. **Mr. Green** stated that regulated tanks do not apply to home heating oil or residences, nor does it apply to farm tanks under 1,100 gallons. The rule applies to most gas stations and a few large farming operations, with tanks that are underground. Its intent is to prevent leaks from happening, due to rust and/or corrosion.

Senator Siddoway asked what would happen if Idaho did not comply. **Mr. Green** said that a fine would be imposed; however, these requirements are already in place by the federal government. This bill determines who will run the program. He also said that the State program was designed from the ground up and the intent was to provide assistance and education to tank owners, so that they would be able to comply to this Act. Federal penalties are stated in statute at \$10,000 instead of \$5,000 and because they have a consumer price index, those are now at \$16,000. When EPA was the primary inspectors and it was done under the federal program, for three years prior to 2007, they inspected 500 facilities and assessed over \$95,000 in penalties. Since then, the State - through their education and technical assistance - have inspected over 1,400 facilities and total penalties collected was \$5,000. In most cases, if a facility comes into compliance very quickly, DEQ is able to reduce or waive the penalty.

Senator Siddoway wanted to know what DEQ receives in exchange for carrying out the compliance. **Mr. Green** responded by saying the difference between the state-run program and the federal-run program is significant. Part of the intent of Idaho's Underground Storage Tank Act was to make us eligible to receive federal funds and it is a 25% match. **Mr. Green** said the current grant from the federal government amounts to \$394,000 a year and the State contributes approximately \$132,000.

Senator Tippetts inquired if there is a deadline involved. **Mr. Green** said he was not aware of a deadline, it is simply a matter of fulfilling the intent of the Act.

Senator Tippetts then asked if DEQ was confident that they are not going any farther than what is mandated in the federal law. The fine at \$5,000 a day causes him (Tippetts) to cringe. **Mr. Green** said that he is confident that it is necessary to get the steps involved in order to get primacy/statutory authority. In the application package that was sent to EPA, this issue was the only thing they found in our law that was deficient.

MOTION:

Senator Siddoway stated that he has some reservations and concerns and begged the indulgence of the Committee to postpone action for one week. He then made a **motion that no action be taken on H 41 until Wednesday, February 23, 2011**. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

Chairman Pearce thanked Mr. Green, then welcomed Mr. Matthew Faulks who will present S 1077.

S 1077:

Mr. Faulks is an **Associate with Bert L. Osborn, Chtd., Payette, Idaho** and is representing Drainage Districts Nos. 7 and 8 in Payette County. They support S 1077 as it sets forth a process for consolidating existing drainage districts. Before starting his testimony, Mr. Faulks introduced three visitors from Payette County - Blaine, Larry, and Marc.

Mr. Faulks said there are many possible advantages to drainage district consolidation. Some of the chief benefits can be described as follows:

1. Consolidation of management can provide for stronger, more active overall leadership and management. As an example, with eight districts in Payette County, there is some difficulty in even filling each of the Boards with active members to manage the districts.
2. Operating efficiencies can be achieved by avoiding unnecessary duplication of equipment and management costs.
3. Consolidating districts that operate in the same drainage system or watershed can facilitate better coordinated controls and management throughout the drainage system. The drainage system and its users can benefit from better means to coordinate use, controls and maintenance of the drainage system.

He stated that they have explored possibilities of more than one type of legal process that may be used to successfully achieve drainage district consolidation. Right now, there is no process available to achieve consolidation. The proposed legislation, as it sits, is a product of considerable input and review by members of a work group within the Idaho Water Users Association, by drainage district officials in Payette County, and elected officials of Payette County. They believe that with this proposed legislation they have defined a process which can effectively provide for drainage district consolidation.

Mr. Faulks further stated that a process for drainage district consolidation by means of judicial proceedings is anticipated in this legislation. This process is offered because it is consistent with other provisions controlling drainage districts. Under current law in Chapter 29 of Title 42, drainage districts are formed and have board membership set exclusively through judicial proceedings.

The proposed legislation is intended to provide sufficient notice, opportunity to be heard and due process to land owners who are affected by the district. The matter to be decided before a court is intended to be limited to a question of whether the petitioning districts should be consolidated. This proposed court process might be described as quasi-administrative in nature. The proposed legislation is also intended to seek efficient time frames to complete a consolidation process yet still allow for realistic demands and limitations in court calendars and staffing. Mr. Faulks provided a colored map of the area involved.

Senator Werk said that he had asked for an Attorney General's opinion of S 1077, specifically regarding limitations of objectors and objections. He stated that the Attorney General did not have any objections to those provisions in the law.

TESTIMONY: **Mr. Blaine Cornell**, representing Payette County Drainage District 8, spoke in favor of the bill.

MOTION: **Senator Siddoway** made the **motion** to send S 1077 to the floor with a **do pass recommendation**. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote. The **floor sponsor** is **Chairman Pearce**.

Next on the agenda was an update of the **Northwest Power and Conservation Council** presented by **William B. Booth**, in the absence of Jim Yost. Both are committee members of NPCC.

PRESENTATION: Mr. Booth said NPCC is divided into two principle committees – Fish and Wildlife Committee, which handles the program overseeing the mitigation for fish and wildlife in the region and the Power Planning Committee. Mr. Booth is currently chairman of the Fish and Wildlife Committee and Mr. Yost is a power representative.

The NPCC Fish and Wildlife program oversees \$200 million in spending, funded by Bonneville and is ratepayer money. The program determines where ratepayer dollars are spent in Idaho; what ratepayer dollars fund; and what the results are. On the Power Planning side, that Committee creates a 20 year power plan for the region. Both plans are renewed every five years.

In the packet that Mr. Booth provided, on page 2 was a pie chart showing where the money is spent in Idaho. About one quarter of the money goes to the Nez Perce Tribe in Idaho and about the same amount goes to the Idaho Department of Fish and Game. Another large amount goes for mitigation land purchases, which Bonneville is required to do to repay those who lost fish and wildlife assets when the dams flooded and caused backwaters.

An inquiry was made as to what the funding to the Indian Tribes was for. Mr. Booth replied that it is for service and projects, such as mitigation, habitat, and hatchery work. Another question regarding the Tribes was what determines the level of spending for each tribe. The response was that it has to do with treaty rights. The relative values have been fairly stable; however, they are reviewed periodically.

Idaho Fish and Game received an additional \$4.75 million in 2010 that was mitigation purchase of land where the sockeye hatchery will be at American Falls. They also participated in the Albeni Falls mitigation, so they received some mitigation funds. Mr. Booth explained that in Idaho, the largest percentage of the money goes to "on-the-ground restoration and protection".

Mr. Booth reviewed ten projects and amounts for FY2010 and they are as follows:

| | |
|---|-------------|
| ** Snake River Sockeye Captive Propagation (IDFG) | \$7,174,520 |
| ** Upper & Lower Lemhi Acquisition/Easements (OSC) | \$3,475,974 |
| ** Albeni Falls Wildlife Mitigation Capital Lane Acquisitions (IDFG, Kootenai, CDA & Kalispell Tribes) | \$2,318,254 |
| ** Southern Idaho Wildlife Mitigation (Shoshone-Paiute Tribes) | \$2,314,049 |
| ** Kootenai River White Sturgeon Aquaculture Conservation Facility (Kootenai Tribe) | \$2,195,038 |
| ** Restore Natural Recruitment of Kootenai River White Sturgeon (Kootenai Tribe) | \$2,001,906 |
| ** Nez Perce Tribal Hatchery Operation & Maintenance | \$1,979,942 |
| ** Salmon Studies in Idaho Rivers (IDFG) | \$1,886,171 |
| ** Nez Perce Tribal Hatchery Monitoring & Evaluation | \$1,762,059 |
| ** Kootenai River Ecosystem Restoration (Kootenai Tribe) | \$1,743,471 |

Mr. Booth feels that the work that is being done in Idaho is balanced out throughout the state.

Sockeye salmon was the next topic covered by Mr. Booth. The upper-most dam, Ice Harbor, was built in 1962 and that is when they started counting sockeye. In the 1980's and 1990's, the species was almost lost. It was principally blamed on the dams, and they did have an impact, but ocean conditions were very unfavorable during that period. In the past few years, there has been quite a spike in numbers, totally due to IDFG programs, funded by Bonneville. They are currently operating out of the facility at the Eagle Hatchery on Eagle Island, also funded by Bonneville. They have been releasing between 150,000 to 200,000 smolts. Also, the ocean conditions have greatly improved which has helped to spike the numbers. To meet Bonneville's goals for sockeye, the number of smolts released needs to be

expanded upwards to 500,000 to 750,000 range. The new hatchery at American Falls will help them reach that goal when that facility is completed.

In closing, Mr. Booth reviewed figures of the past ten years of Snake River spring/summer Chinook salmon adults. It showed an increase in both wild and hatchery fish, with 2010 being a record year. In his view, it is work done by conservation, work at the dams, and great ocean conditions that have contributed to the increase. There are increases in the Snake River fall Chinook salmon adults, the Snake River summer steelhead adults, and the Snake River sockeye salmon.

The **Power Planning Committee** provided a handout that outlined their purpose and duties. Following are some highlights:

****To develop a regional plan to "assure the Northwest an adequate, efficient, economical and reliable power supply."**

****To analyze the adequacy and reliability of the power supply.**

Conservation is first priority because:

1. It is the lowest cost resource by far;
2. It has no greenhouse gas emissions and therefore reduces risk from potential carbon pricing policies;
3. It avoids fuel price risks;
4. It provides both capacity and energy;
5. It is a source of local jobs and economic activity.

Conservation and Energy Efficiency

- Since 1980, the Northwest has achieved 3,900 megawatts of energy conservation.
- 3,900 megawatts is equal to 40% of growth in electricity demand over the last 25 years in the Northwest.
- The average cost of this conservation was less than three cents per kilowatt-hour.
- The NWPCC has identified an additional 3,000 megawatts of conservation (also less than three cents) that is available.

Renewable Generation

- Wind power is expected to meet the majority of RPS requirements.
- Geothermal and other smaller-scale renewables such as biogasification, bioresidue combustion, hydropower upgrades, and new hydropower may be cost-effective and should be explored when available at the local level.

Natural Gas

- Natural gas-fired generation can provide energy, firm capacity and flexibility when needed
- Gas-fired generation options provided protection against rapid growth and offer reduced carbon-emission generation if carbon prices are high.
- The price of natural gas since the 6th Power Plan was released has decreased from over \$7 per million Btu to approximately \$4 per million Btu.

More Efficient Use and Expansion Power System Infrastructure

- Improved operation of the existing power system for wind integration.
- Transmission system investments to improve market access and access remote wind potential.
- Preserve the capability of the hydroelectric system while protecting salmon and steelhead.

Explore Long-Term Alternatives

- Demand response (firm capacity, flexibility).
- Smart grid development (system operation, demand-side opportunities).
- Energy storage (firm capacity, flexibility).
- Coal gasification with carbon sequestration (reduced CO2).
- Advanced nuclear technology (baseload energy, reduced CO2).

Idaho Issues and Challenges

- Peaking Capacity Shortfall.
- Renewable Energy Credits (REC's).

PAGE

RECOGNITION:

Chairman Pearce called on Marie Stettler, the Page for this Committee to come forward, and he presented her with a Senate watch and a letter of acknowledgement.

He then invited her to share her future plans. Marie said she plans to intern here next year, and then her college plan is to major in English. She hasn't yet decided as to which school she will attend.

ADJOURN:

The meeting was adjourned at 2:55 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 21, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------|---|--|
| | "Gold Room Workshop" sponsored by the Idaho Council on Industry and Environment (ICIE) "Bull Trout - 20 Years Later" | Patricia Barclay, ICIE; Nate Fisher, OSC; Norm Semanko, IWUA |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 21, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, and Stennett

ABSENT/ EXCUSED: Senator Werk

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: The meeting was called to order by **Chairman Pearce** at 1:35 P.M.

INTRODUCTION: He then asked **Vice Chairman Bair** to introduce the Committee's new Page, Mitchell Jensen. The Vice Chairman is sponsoring "Mitch" and said that he is a fine young man and will serve the Committee well. Mitchell said that he is glad to be here and is looking forward to learning more about the legislative process.

PROGRAM: **Chairman Pearce** said the program today is sponsored by the Idaho Council on Industry and Environment (ICIE) and welcomed **Ms. Joan Cloonan, President of ICIE**. She said the presentation is "Bull Trout - 20 Years Later" and it was presented at the 22nd 'Gold Room' workshop on February 9th. Presenters today are **Ms. Pat Barclay, Executive Director, ICIE; Mr. Nate Fisher, Administrator, Office of Species Conservation (OSC); and Mr. Norm Semanko, Executive Director, Idaho Water Users Association (IWUA)**.

SPEAKER: **Ms. Barclay** provided a Power Point presentation titled "Bull Trout Conservation: Critical Habitat, Recovery and Delisting". Following is information from those slides:

Overview of Bull Trout Management Under the ESA

- 1998: Bull trout listed in Idaho as threatened.
- 2004: Draft recovery plan completed, proposed critical habitat.
- 2005: Final critical habitat designated; 75% excluded – litigation filed.
- 2008: Inspector General finds fault with exclusions.
- 2009: Court grants critical habitat rule remand.
- 2010: Final critical habitat rule published – move to finalize recovery plan.

Effects of Critical Habitat

- Critical habitat benefits
 - **Protect unoccupied habitat
 - **Focus recovery efforts
 - **Educate public
- Little change for actions already "consulted" on (like BOR Upper Snake water projects)
- Little change in salmon and steelhead critical habitat

Critical Habitat Designation

- 2010 Final Rule:
 - **19,700 miles (8,900 miles in Idaho)
 - **488,300 acres (170,200 acres in Idaho)
- Areas removed based on comments:
 - **2,900 miles (1,900 miles in Idaho)
 - **45,200 acres (27,700 acres in Idaho)

Economic Impact Analysis

- Bull trout listed under ESA since 1998
- "Incremental" effects analysis for CH
- Primary increased cost of CH - federal agency "consultation" (\$5-7 million/year range-wide)

Little cost to actions because 94% of habitat is occupied and protected by original listing regulation

Comments & Responses Range-Wide

Received 1,111 comments from 350 commenters, including: Federal agencies; Tribes; States; General Public, and Peer Reviewers.

All comments reviewed, responded to, summarized – changes made to final rule.

Idaho Water-Related and Other Comments

- Received 34 sets of comments from Idaho and private parties regarding water use – about 130 comments.
- Received bull trout biology comments from partners, including state. (Removal of 1,900 miles and 27,700 acres in Idaho).
- No habitat in Idaho met exclusion criteria
- Excluded 1,900 miles and 19,400 acres of habitat in three other states.

Exemptions and Exclusions

- Exclusions Criteria: (1) Plan is at an appropriate management scale. (2) Plan is finalized and of sufficient duration. (3) Plan includes implementation and effectiveness assurances.
- All exclusions and exemptions based on adequate, existing management plans, and on national security - none on economic impact.

On-The-Ground Conservation Actions

We continue working with partners to conserve bull trout, including:

- Thousands of miles of habitat connectivity restored
- Thousands of cubic feet per second of water flows restored
- Hundreds of miles of stream habitat quality improved
- Significant water quality improvements
- Significant protection from direct take

Recovery is succeeding, especially in Idaho.

Bull Trout Next Steps

Recovery Planning, implementation, and delisting. Still the state of Idaho's priority?

Getting to Bull Trout Recovery

Complete Recovery Plan by 2012

- Agree with partners on recovery criteria and achieve them.
- Return management authority to states by watershed?
- Delist - by Recovery Unit?

Service has prioritized this work with our partners.

SPEAKER:

Speaking next was **Mr. Fisher** from **OSC**. He, too, had a Power Point presentation.

Bull Trout

****October 2010, USFWS grossly expanded critical habitat for bull trout in Idaho and surrounding states.**

****8,772 miles of streams and 170,218 acres of lakes and reservoirs were designated as critical habitat for bull trout in Idaho.**

****This designation has the potential to result in further restrictions on activities occurring on federal land near rivers and lakes designated as critical habitat.**

****OSC took the lead in coordinating comments for the State during the proposed stage emphasizing the economic implications of such a vast and far-reaching designation.**

****Consequently the USFWS was not amenable to the State's concerns and blanketed Idaho in critical habitat.**

****The State is currently exploring its legal options to scale back imposed designation.**

Bull Trout - Critical Habitat

****Per Section 4(a)(3)(A) of the ESA, the Secretary is required to designate critical habitat concurrent with a listing determination.**

****Often times the regulatory agencies are unable to designate critical habitat at the time of listing.**

****Over the past decade, the courts have largely driven the action agencies to designate critical habitat for listed species.**

****The designation of critical habitat for bull trout has gone through its own share of legal challenges.**

Bull Trout - Critical Habitat (CH) - State Comments

The State of Idaho never agreed to the 1998 listing of bull trout and therefore does not agree to CH designation.

****In 2010, the State reluctantly worked with the Service to help "scale back" the proposal to something more manageable.**

****The State did its due diligence during proposed stage and tried to direct the Service with site-specific information on where to avoid applying CH designations.**

****State's comments also focused on:**

- Adequacy of existing regulatory mechanisms
- Concerns over the Service's flawed economic analysis (required under Section 4)
- The Service's failure to conduct NEPA analysis
- WQ standards not conducive for CH designation
- Unwarranted CH designations in unoccupied habitat
- Additional regulatory burdens placed on the backs of land users

****Idaho's comments were largely ignored.**

Bull Trout - What Happens Next?

******The final rule for bull trout CH went into effect on November 17, 2010.

******With CH designation, federal managers must now ensure that projects they authorize and carry-out will not "adversely modify" critical habitat.

******Re-consultation is automatically triggered for federal activities that have already gone through jeopardy consultation (i.e. grazing allotments, timber projects, reservoir projects).

******Unfortunately, this places a bigger target on federally authorized projects and projects on private land with a federal nexus.

SPEAKER:

Mr. Norm Semanko, IWUA, was the final speaker for the Bull Trout presentation. His main points emphasized were (1) Economic Impacts; (2) Definition of Critical Habitat; and (3) Effects of Critical Habitat Designation.

Economic Impacts

From page 29 of the Critical Habitat Rule: The Secretary of Interior did not exert his discretion under section 4(b)(2) of the ESA to exclude any particular areas from the designation on the basis of economic impact; not one acre of lake or reservoir; not a single stream mile. That is arbitrary and capricious and should be investigated by the Inspector General. Our experts estimated over a billion dollars in potential costs in southwest Idaho.

Definition of Critical Habitat

Also from page 29 of the Rule: Critical habitat is defined as the bed and banks of waterbodies, but actions that may destroy critical habitat could occur on lands adjacent to waterbodies. From page 38, critical habitat includes bankful streams and bankful reservoirs. BOR attempted to fix the rule, by recognizing reservoir fluctuations, but USFWS in Washington, D.C. didn't listen. The ESA requires that there be no adverse modification of critical habitat (bank full streams and bank full reservoirs). Let your imagination run wild about the kinds of arguments that can be made about drawing down reservoirs to deliver water and whether that constitutes adverse modification. Page 38 of the Rule says that fluctuations of reservoir levels may affect bull trout populations, as determined on a case-specific basis. USFWS refused to adopt BOR's suggested language that "changes in flows and volumes are acceptable", opting instead to say, "We must be cautious, however, not to imply that fluctuating conditions would never constitute adverse modification.....The fact that an existing Federal project is not presently adversely modifying critical habitat does not mean that the same operations would not result in adverse modification under future circumstances."

Effects of CH Designation

From page 45 of the Rule: Section 7(a)(2) of the ESA requires federal agencies to ensure that their actions are not likely to destroy or adversely modify critical habitat. The determination is whether the affected critical habitat would remain functional. Federal regulations require federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat has subsequently been designated. As a result, federal agencies may sometimes need to request reinitiation of consultation on actions for which formal consultation has been completed. This is the exact case with Upper Snake Basin water project in southwest Idaho which has already undergone consultation pursuant to the Nez Perce Water Rights Agreement. It is unclear what new conditions may be required because of reinitiation of consultation or whether such consultations will undo the existing biological opinions for salmon. This potentially impacts the entire region.

Activities That May Affect Critical Habitat

1. Detrimental alteration of the minimum flow or the natural flow regime of any designated stream segment or water bodies; this includes water impoundment and water diversion.
2. Alterations to the designated stream segments and water bodies; this include construction and operations of impoundments, as well as livestock grazing, off-road vehicle use and mining.
3. Detrimental altering of the channel morphology of any of the designated stream segments; this includes impoundments.
4. Detrimental alterations to the water chemistry in any of the designated stream segments.
5. Proposed activities that are likely to result in the introduction or spread of nonnative species in any of the designated stream segments.
6. Proposed activities that are likely to create significant instream barriers; this includes water diversions, water impoundments and hydropower generation.

Mr. Semanko said that at a previous meeting, he specifically invited USFWS to voluntarily remand the rule to examine the potential economic and other impacts in southwest Idaho, for potential exclusion of the reservoirs from the critical habitat designation.

SUMMARY:

Ms. Cloonan said she wanted to thank the speakers and also thank the Committee for listening to the presentation. ICIE's mission is to facilitate the use of facts and sound science in shaping public policy involving environmental issues. They are able to provide help and/or information on any of the issues. She also thanked and acknowledged the sponsors who made the presentation available.

ADJOURN:

Chairman Pearce thanked Ms. Cloonan and said the Committee needs to be well informed and he appreciates the updates. With no further business to come before the Committee, the meeting was adjourned at 2:35 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AMENDED #1 AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, February 23, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------------|--|--|
| <u>H 41</u> | Held for one week by request (2/16/11) No further discussion – voting only. | |
| <u>HCR 3</u> | SOP correction by House No further discussion – voting only. | |
| RANGELAND | Presentation - Center for Sustainable Rangeland Ecology & Management | Dean Kurt Pregitzer, College of Natural Resources, UI; Dr. Karen Launchbaugh, UI |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce

Vice Chair Bair

Sen Cameron

Sen Siddoway

Sen Brackett

Sen Heider

Sen Tippetts

Sen Werk

Sen Stennett

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: (208) 332-1323

email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 23, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:35 P.M. and said some minutes needed to be approved.

MOTION: **Senator Werk** made a **motion** for the approval of the minutes of February 7, 2011. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Stennett** made a **motion** for the approval of the minutes of February 9, 2011. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Siddoway** made a **motion** for the approval of the minutes of February 16, 2011. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

H 41: **Senator Siddoway** stated that he had asked that H 41 be held for one week so that he would be able to do some research. He said that he found the answers to his questions and now feels comfortable with those issues.

MOTION: He then made a **motion** to send H 41 to the floor with a "**do pass**" recommendation. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote. **Senator Tippetts** will be the floor **sponsor** of the bill.

HCR 3: **Chairman Pearce** provided a brief history regarding HCR 3.

This resolution would authorize the Legislative Council to continue an interim committee to undertake studies of natural resource issues, particularly those water resources of the state. The Committee had previously sent this bill to the floor with a "do pass" recommendation; however, when the bill was before the full Senate, an error was found on the Statement of Purpose (SOP) and was returned to this Committee. The error was corrected by the Secretary of the Senate and the Chief Clerk of the House and the Committee was to act on the bill today. In the meantime, Chairman Pearce said that he was told to hold the bill in committee until such time to see if funds will become available for the study.

No action was taken and the bill will be held indefinitely.

WELCOME: **Chairman Pearce** welcomed **Dean Kurt Pregitzer, College of Natural Resources, University of Idaho** and **Dr. Karen Launchbaugh, University of Idaho Rangeland Center**.

Dean Pregitzer provided an overview of the College of Natural Resources. It was founded in 1909 and is the only natural resources degree program in Idaho and one of the top three programs in the West. They have 54 faculty and 74 staff members. The undergraduate students number 512 and there are 198 graduate students.

The outlying field stations and facilities consist of: Center for Forest Nursery and Seedling Research; Experimental Forest; Herald Nokes Family Experimental Forest; Howard W. & Geraldine E. Russell Tree Farm; Lee A. Sharp Experimental Area; Matthew M. McGovern Jr. Memorial Tree Farm; McCall Field Campus; Pinestia: Guernsey Outdoor Classroom; and Taylor Wilderness Research Station.

Dr. Launchbaugh presented the Rangeland Program.

A Bold Step Forward - The University of Idaho Rangeland Center

"After nearly a century of rangeland education, outreach, and research at the University of Idaho, we are taking a bold step forward to create a powerful collaboration among researchers, educators and practitioners from across campus and across Idaho focusing on rangelands."

- Rangelands cover half of Idaho, half the West, and half the globe. Rangelands affect the ecological health and economic livelihood of our state and region.
- Though caring for rangelands is a complex and challenging task, much is known about how these lands function and change. We can continue to build on our strong academic foundation and the rich heritage of our state to draft a sound future for the study of rangelands.
- Challenges facing rangelands are complex and large-scale. The modern challenges of rangeland management require integrative thinking and innovative practices to maintain and restore these lands and the human communities that rely on them.
- Affecting the stewardship and conservation of rangelands will require a synthesis of people from a broad range of disciplinary backgrounds.

Researchers and educators from seven departments, three colleges, and U-Idaho Cooperative Extension have come together to create a new model for interdisciplinary research, education, and outreach to fulfill their land-grant mission.

This Center will not be a place or a building. It will be a group of people who want to advance the understanding of rangelands.

The group consists of 23 researchers and educators with expertise in grazing, rangeland ecology, entomology, soil sciences, economics, rural sociology, fish and wildlife management, invasive plant management, forage production, animal science, restoration and the use of spatial technologies to understand rangelands.

They will provide a variety of services and products to those interested in rangeland conservation and management, such as workshops; informative web pages; student projects; research papers; and decisions support tools.

The Rangeland Center will empower researchers and educators at the University of Idaho who strive to create insight and foster understanding for the stewardship of rangelands. Their innovative design will promote active partnerships with individuals, organizations and communities who work and live on these vast landscapes. They will focus research and education to produce solutions that are responsive and relevant to contemporary rangeland issues.

In the Rangeland Program, there will be increased research emphasis on endangered species, including sage-grouse; targeted grazing to create fuel breaks; invasive species and their consequences on grazing land; juniper invasion and sagebrush steppe; landscape assessment tools (geospatial); and wild fire and wildlife interactions.

Increased research emphasis in the Fire Science Program includes interactions between wildlife and invasive plants; fire in the wildland/urban interface; treatments to reduce fire risk to humans (property, structures, people, animals); smoke management; and geospatial understanding of fuel, burns, weather, fire consequences to wildlife and grazing.

The Wildlife Resources Program is working toward increased research emphasis on sage-grouse; mule deer habitat; water/fire/wildlife interactions; consequences of wolf reintroductions; and bighorn sheep/infectious disease interactions.

Waters of the West Program's increased research emphasis is on helping water policy-makers whose decisions must consider the multiple dimensions of a water basin, water law, and more.

Dr. Launchbaugh said that rangelands are here to stay. Of the earth's land surface, 47% is rangeland; 53% of the Western States is rangeland; and 48% of Idaho is rangeland. She closed by outlining a Rangeland Mission

Science and Solutions for the Range

- Create insight and foster understanding for the stewardship of rangelands.
- Promote active partnerships with individuals, organizations and communities who work and live on these vast landscapes.
- Focus research and education to produce solutions that are responsive and relevant to contemporary rangeland issues.

Chairman Pearce thanked Dr. Launchbaugh and Dean Pregitzer for their presentation.

ADJOURN: The meeting was adjourned at 2:25 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, February 28, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------------|-----------------------------------|--|
| <u>H 142</u> | Water Skiing | Rep. Eskridge |
| <u>HJM 2</u> | Wilderness Designation | Rep. Shepherd |
| <u>H 155</u> | F&G, black bear process fee | Sharon Kiefer, Ass't. Director of Policy, IDFG |
| <u>H 52</u> | Geothermal resources, land leases | Kathy Opp, Deputy Director, IDL |
| <u>H 53</u> | Geothermal resource leases | Kathy Opp, Deputy Director, IDL |
| <u>H 54</u> | Geothermal leases, surface area | Kathy Opp, Deputy Director, IDL |
| <u>H 56</u> | Geothermal resources, bonding | Kathy Opp, Deputy Director, IDL |

*If any bills should not be heard today, they will
be carried over to Wednesday, March 2, 2011.*

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 28, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:35 p.m.

He then called on Representative Eskridge to present his bill.

H 142: **Representative Eskridge** said that H 142 provides that the observer may be absent from a vessel pulling a water skier when the vessel is operating within a regulation legal and permitted water skiing slalom course, provided that the boat is equipped with a rear view wide angle mirror that gives the operator full visibility of the rear of the boat and the skier as the operator maneuvers the boat through the slalom course. Regulation slalom courses have 26 or more colored buoys that sets the pattern that creates a controlled environment. A boat pulling a water skier is in a safer situation when using the slalom course because only one boat is operating at a time in that particular area. If another boat wants to use the slalom course, they wait outside the buoyed area until the first boat is finished. There are currently no less than 17 states that allow for this regulation and use the same or similar language that is in this bill. The USA Water Ski Association, the governing body for U.S. water sports, finds no increase in accidents as a result of the law in the states that permit it. Representative Eskridge said this legislation has been reviewed by the Idaho Sheriffs Association and it has their support.

Senator Tippetts asked if the people proposing this legislation wanted to have the exemption of the requirement of an observer in the boat during competition. Current law allows them to be exempt from the requirement of an observer during competition. He said that as drafted, that part is being repealed, it appears that more work needs to be done on the legislation, as there could be unintended consequences.

Senator Heider said he agreed with Senator Tippetts that more work needs to be done.

Senator Tippetts asked Representative Eskridge if the bill was held until Wednesday, would that give enough time to work through the issue that needs to be resolved? **Representative Eskridge** said yes.

MOTION: **Senator Tippetts made the motion** to hold H 142 until Wednesday, March 2, 2011. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

HJM 2 **Representative Shepherd** presented this Joint Memorial. The purpose is to inform our Congressional delegation and the Secretary of Interior that the state of Idaho will not support any type of wilderness designation without including the citizens of the state of Idaho in a full public process.

Senator Stennett inquired as to what a "full public process" entails. **Representative Shepherd** replied that it is the process that regulates the hearing process.

Senator Werk asked Representative Shepherd if he had read Secretarial Order 3310, entered by U.S. Secretary of the Interior, Ken Salazar. **Representative Shepherd** said that he has read the Order, but does not have specific notes with him; however, he stated that instead of the full public process, the Order gives the bureaucracy the ability to make rules. **Senator Werk** then read from the Order and he sees a process within the Order that has to do with land-use planning and project decisions.

Senator Tippetts asked for examples of compromises and agreements that have been referred to in paragraph two, page two of the Memorial.

".....many compromises and agreements were laboriously and painfully worked out by all interests involved and specific legislative language was agreed upon to protect traditional uses. Once the designations were made, however, the compromises and agreements were forgotten and the protective language was circumvented."

Representative Shepherd said one example was the Frank Church Wilderness. **Senator Tippetts** then asked if any of the agreements were enforceable through the Courts? **Representative Shepherd** replied that he doesn't see it as a legal situation, but the intent and good faith has not been kept. The communities desperately need the resources (grazing, timber, etc.) and they can utilize those with good management and good stewardship.

Senator Brackett stated that all wilderness that has been designated to this point has been done so by Congress and this Memorial sets up a process that would essentially bypass Congress. The lands would not be declared wilderness, but can be managed as wilderness to protect those wilderness characteristics. The Owyhee Initiative was passed just over a year ago and in that process, 500,000 acres (give or take) were added to wilderness and other wilderness study areas that have been de facto wilderness for 30-40 years may be thrown back in for review for management possessive wilderness characteristics. He also said that these lands have been inventoried and inventoried, so this sets up a process without Congressional action. Senator Brackett said that he fully agrees with the intent of the Memorial.

TESTIMONY:

Mr. Jonathan Oppenheimer, Senior Conservation Associate with the Idaho Conservation League, spoke in opposition to HJM 2. He said that throughout Idaho, there are a number of efforts that are ongoing to work through areas of historic agreements. There has been a lot of debate over natural resource management and public lands and the ICL feels they are at a significant new stage with regards to the discussions as to how the lands should be managed. He stated that they fear this Memorial will create a distraction for these efforts, and also feel it is unnecessary because there are already public processes.

TESTIMONY:

Mr. Wally Butler, Range and Livestock Specialist for the Idaho Farm Bureau, testified in support of HJM 2. He said that most of the issues he wanted to address have been covered to some degree and he has read Secretarial Order 3310. Mr. Butler said that he has some of the same concerns about the openness and public portion of the process as he has worked on many collaborative efforts and many of them are focused well within those agencies and he has concerns with that.

MOTION:

Senator Siddoway made the **motion** to send HJM 2 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. A roll call vote was called. Voting **aye** were **Senators Tippetts, Heider, Brackett, Siddoway, Cameron, Bair, and Pearce**. Voting **nay** were **Senators Werk and Stennett**. The motion **passed** by a majority vote, 7-2. **Chairman Pearce** will be the floor **sponsor**.

H 155:

Ms. Sharon Kiefer, Assistant Director of Policy, IDFG, presented H 155. She said this bill is supported by the Fish and Game Commission and the Department appreciates Representative Boyle's assistance. This bill is a housekeeping measure that makes Idaho Code (I.C.) 36-1407 consistent with I.C. 36-202.

In 2010, the Legislature passed H 416, amending I.C. 36-202, which defines the waste of edible meat of certain wildlife as an unlawful activity. The new law exempted black bears from the definition of waste, meaning hunters are not required to retain possession of black bear meat after harvest.

They have another section of I.C., 36-1407, that directs court-ordered processing fees imposed on violators for certain violations of several big game animals. This is in addition to other penalties. The processing fees create a pool of funds to use for processing confiscated or hunter-donated meat for distribution by charitable organizations. This bill amends I.C. 36-1407 to remove black bear from the list of species for which court-ordered judgment of processing fees apply because hunters are not lawfully required to possess black bear meat after harvest.

MOTION:

Senator Tippetts made the **motion** to send H 155 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

Ms. Kathy Opp, Deputy Director for the Idaho Department of Lands (IDL), presented four pieces of legislation, all related to geothermal leasing on state lands. She emphasized that these bills deal only with geothermal activities on state lands.

The Governor supports these proposed statutory changes that are in keeping with his statewide alternative energy initiative. This legislation has the potential to increase revenue for the state, particularly, endowment trust lands. If adopted, the amendments will provide greater incentives to develop geothermal projects, which will enhance financial returns to the state.

As part of the research done to prepare this legislation, Ms. Opp said that the IDL contacted the major companies exploring for, and producing geothermal resources in Idaho. They also contacted the other western states and discussed how they handle geothermal leasing. All of this information was then used to draft these changes. The entities contacted were: US Geothermal, Standard Steam/Agua Caliente; Idatherm; 2009813 Delaware (Energy Source); Office of Energy Resources; and other western states.

It is recognized that changes to IDAPA 20.03.15, Rules Governing the Issuance of Geothermal Resource Leases, will also be needed to implement any changes in statute. If these statutory changes are approved, the IDL would enact a temporary rule followed by a negotiated rulemaking to address these and other issues. Rule making by the Land Board and governing geothermal activity is provided by Idaho Code 47-1603. These actions would ensure an immediate ability to encourage exploration and development consistent with our phased lease contract used for wind energy production and other long term commercial activities.

H 52:

Ms. Opp said this bill addresses changes to I.C. 47-1601, Lease Term. IDL needs to eliminate a conflict between 47-16 and 58-3. The current geothermal leasing statute limits the lease term to 10 years. However, Title 58, Chapter 307, defines geothermal leases as a commercial purpose and allows commercial leases up to a 49 year lease term. This does not mean all leases are guaranteed the 49 year term. They work with their long term lessees to determine the most appropriate initial term based on the project proposal.

A longer lease term will give the lessees more security when they are negotiating power purchase agreements and financing. It will also reduce IDL administrative costs by reducing the number of lease renewals. Opportunities for rent or royalty adjustment will be built into the leases so these rates will not be locked in for 49 years. Industry also favors a lease term in excess of 10 years to adequately realize the capital investment in a project.

Chairman Pearce inquired if there are any major geothermal projects ready to go. **Ms. Opp** said they do not have any project proposals before them, but they do have 40+ geothermal leases and this bill will help incentivize those types of projects.

Senator Werk inquired if geothermal leases were cancelled due to inactivity. **Ms. Opp** indicated that several have been cancelled for that reason.

Senator Cameron asked where does the lease come into the process? Is the lease signed at exploration? Signed prior to exploration? Signed after exploration? **Ms. Opp** said that on the long term leases, the developer/operator can come in with a proposal and a lease can be negotiated prior to them doing any exploratory drilling. With the staged lease, they would have to make progress in a two to three year window and share their exploration results with the IDL. Once that is done, they can move into the next phase, which is typically going to be construction. Just an exploration permit can also be requested, but it does not secure the land tenure. **Senator Cameron** then inquired about the exploration permit; i.e., first right of refusal or protection of some sort. **Ms. Opp** deferred that question to **IDL's Minerals Program Manager, Eric Wilson**. **Mr. Wilson** said that under a land use permit which they issue for temporary exploration activities, it does not secure any tenure or right of preference. IDL has several lease applications which are still pending and the lease applications do secure their first place in line. Under the stage lease format, IDL could immediately negotiate the terms of the lease, issue the lease, and the person or company would have about three years to do their exploration. The second phase would be to secure financing and do the construction. **Senator Cameron** then inquired as to how **Mr. Wilson** or the state knows what the appropriate level of negotiations should be on the lease, without knowing what the resource is underneath the ground. **Mr. Wilson** replied that they look to other states and what other landowners are getting as far as what royalty rates are. They also have done research on what other states' rates are, the federal rates, and other information on what private property owners are getting for royalty rates. All of that determines the market value and that is used to help them negotiate the lease terms. **Senator Cameron** said that it appears to him that both the state and the leasing body are entering into the leasing agreement blindfolded, as they are not able to determine the potential resource. **Ms. Opp** responded by saying that most people don't come in without an idea of what their project proposal or plan is or what use they are going to have. It is based on that use that IDL is able to craft an appropriate contract, royalty rate, and lease rate during each phase of the lease. It is their plan that drives the appropriate pricing of the contract.

MOTION:

Senator Brackett made the **motion** to send H 52 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

H 53:

Ms. Opp said this bill deals with I.C. 47-1605, Rent and Royalty for geothermal leases. Currently the statute affixes a minimum 10% royalty rate for all geothermal uses. The Land Board needs flexibility in setting the royalty rates due to the wide variety of uses for geothermal resources. These uses include direct heating of buildings, industrial heating, commercial recreation, direct power generation, and binary power generation. All of these uses may require different rent or royalty structures in order for the lessee to run a profitable operation, and for IDL to receive an appropriate return to the endowment beneficiaries.

The changes proposed provide consistency with I.C. 58-307 by allowing for the Land Board to negotiate a rental amount in the manner appropriate to the development. This would be important for leasing small, isolated state tracts that are part of a larger mixed ownership resource. The existing statute allows rent to be set by the Land Board through bidding or formulas, and the proposed revisions retain this ability.

Negotiation for royalty rates and basing royalty on market value is the substantive change to the provisions. Each geothermal project has a different land base and a different set of financial assumptions that vary with the type of use proposed. Consistent with 58-307(11) the Land Board needs the ability to vary the royalty rate to adjust for specific project variables. For instance, communication site and wind energy leases allow negotiated rentals and royalty based on market rates, which has greatly increased revenue and opportunities for revenue since IDL abandoned the BLM rates. Market indicators provide a place to start negotiations, and market values must be attained throughout the duration of the lease.

The majority of geothermal development companies understand our endowment mission and the need for market rents. One or two companies would prefer that the statutes mirror rates imposed by the Bureau of Land Management (BLM). The BLM's mission is **substantially** different from the endowment mandate to achieve market rates. Also, the federal NEPA process and federal "red tape" can add substantial costs to a development. As such, rent and royalty for federal projects must reflect these facts. Intermingled federal/state developments may not result in significantly more revenue for the state. However, **uniform application of the BLM rates across endowment land is not appropriate.** Flexibility to negotiate long term commercial rates consistent with I.C. 58-307 is needed to properly reflect specific development constraints and opportunities.

Uncertainty in securing leases was another concern expressed by companies. Consistent with our wind power leases and other long term commercial leases, IDL uses a staged lease to allow leases to be issued prior to exploration. Typically rents are lower during exploration and construction to incentivize ultimate development. The lessee is required to show progress on timely exploration and development or the lease may be cancelled and offered to someone else. The intent is to weed out the speculators.

IDL proposes to keep royalty payments separate from rent. Rent is used to secure land tenure and cover annual administrative costs. Whereas, royalty reflects the endowments' share of production from the leasing activities on endowment lands.

Senator Cameron asked Ms. Opp to explain how the competitive bidding process would work in this lease arrangement. **Ms. Opp** said if one was in a competitive bidding scenario, there would be a lot more known about the resource. **Senator Cameron** then asked if IDL takes into account the rates other states pay on BLM ground that may be neighboring and how is that balanced between the value of what is being paid versus the desire of a financier to get the lowest potential rate and may choose to come off state ground and go to the neighboring plot that is BLM ground. **Ms. Opp** said that if it is a large geothermal resource, there is an opportunity for the state to participate in the geothermal resource pool, but there is still room for negotiations. Also, the developers know how to sort out the costs and the greater return on the offer between the private landowner and the state.

MOTION:

Senator Siddoway made the **motion** to send H 53 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

H 54:

Ms. Opp said that H 54 amends I.C. 47-1604. A geothermal field may cover several thousand acres, but geothermal leases are currently limited to 640 acres. IDL proposes to treat geothermal leases consistent with grazing and commercial leases, which are not limited in size and can also require very large areas in order to make a commercially viable project. This will reduce the administrative costs for IDL and lessees by only having one state lease instead of a dozen or more for essentially one project. Applicants will be able to recommend lease areas based on their estimate of the geothermal field. IDL would take that into consideration when reviewing the lease application. Industry also favors a lease size in excess of 640 acres, if necessary, to properly cover the resource field being developed.

Senator Tippetts inquired as to the rationale of the size of land for leasing. **Ms. Opp** said at statehood, sections of land were granted, 640 acres. That was a logical division in the 1890's.

MOTION:

Senator Bair made the **motion** to send H 54 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Tippetts**. The motion **passed** by unanimous voice vote.

H 56:

I.C. 47-1608, deals with bonding on geothermal leases. The proposed changes will remove arbitrary bond amounts and provide for bonds to be based upon the amount needed for each phase of a lease (exploration, construction, operation, and reclamation). Bonding is required under the current statute even if no activity has occurred on the ground. This requires lessees to expend their resources with no benefit to them or IDL. The proposed changes will only require bonding to be submitted to address reclamation when ground disturbing activities take place. This could be for access roads, seismic shot holes, the surface impacts of drilling, and similar activities. The amount of the bond would be based on reasonable reclamation costs as specified in the lessee's approved development and reclamation plan. The change will reduce the potential to over bond a lessee during exploration and set an appropriate level of bond during other phases of the development.

Well closure is the responsibility of the Idaho Department of Water Resources, and IDL proposes to make this clear in the revised statutory language.

Chairman Pearce asked if bond amounts would be related to the depth of drilling. **Ms. Opp** stated that they would look at the best practices in the geothermal industry; look at the project proposal; and consider the number of wells going in.

Senator Cameron asked about the timing - when the bond would be secured versus when they would know the resource potential. **Ms. Opp** said they negotiate all the phases of the lease up front and they wouldn't be able to determine bonding until they get through. They can bond for their exploratory activity, then when they are constructing and then set an appropriate bond. At that point, bonds would be higher for construction and another appropriate bond for reclamation. **Senator Cameron** said that often times developers have multiple sites that they are developing at the same time and asked if there is anything that would prevent them from maintaining a certain level of bond for all of those sites that could cover the various stages. **Ms. Opp** said they have used umbrella coverage for bonding and a combination of insurance.

MOTION: **Senator Bair** made the **motion** to send H 56 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

SPONSORS: **Chairman Pearce** thanked Ms. Opp for presenting the bills and then asked the Committee members who would like to be the floor **sponsors**.

Volunteering were **Senators Cameron - H 52; Werk - H 53; Siddoway - H 56 and H 155; and Vice Chairman Bair - H 54. Chairman Pearce will sponsor HJM 2.**

ADJOURN: The meeting was adjourned at 3 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 02, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------|------------------------------------|-------------------------------|
| H 142 | Water Skiing | Rep. Eskridge |
| HCR 10 | Lands Dept., rules, rejected | Rep. Shepherd |
| HCR 11 | Fish & Game, rule, rejected | Rep. F. Wood |
| H 135 | Historical Soc/Lewis & Clark Trail | Janet Gallimore |
| H 143 | Fish & Game, veterans | Rep. Patrick Sen. Stennett |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 02, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M.

MOTION: **Senator Heider** said that he had reviewed the minutes of February 14 and made the **motion** to approve them. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

MOTION: **Vice Chairman Bair** said that he had reviewed the minutes of February 23 and made the **motion** to approve them. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

H 142: **Representative Eskridge** reviewed H 142 (which was heard on Monday, 2/28). He said that lines 20 and 22 interfered with the proposed condition to the statute, eliminating the need for an observer when in a regulated, legal slalom course. Representative Eskridge provided some suggested language that could be used in the 14th Order as a means of clarifying the conflict. In addition, Senator Tippetts, Senator Davis, and Representative Eskridge, after another review, added another change.

MOTION: **Senator Tippetts** said that he agreed that the bill now does what it is suppose to do. He then made a **motion** to send H 142 to the **14th Order** for consideration of amendment. **Senator Werk seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Keough** will be the floor **sponsor** of this bill.

HCR 10: **Representative Shepherd** said that this Concurrent Resolution would reject a subsection and a section in a pending rule of the Department of Lands relating to Selling Forest Products on State Owned Endowment Lands as being not consistent with Legislative intent. The effect of this resolution, if adopted by both houses, would be to prevent the subsection and the section from going into effect.

MOTION: **Vice Chairman Bair** said the Committee does concur with the House on these rules. He then made a **motion** to send HCR 10 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote. **Vice Chairman Bair** will be the floor **sponsor**.

HCR 11: **Vice Chairman Bair** said that this is a Fish and Game rule that dealt with the hunting of birds from a boat with several people across the bow of the boat. It is a fair chase issue and this Committee supported the rule as opposed to the House who rejected the rule.

MOTION: **Senator Siddoway** made a **motion** to **hold** HCR 11 in Committee. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

H 135:

Ms. Janet Gallimore, Executive Director, State Historical Society, presented H 135. This proposed legislation is to update the statute to eliminate reference to the bicentennial commemoration, which has concluded, and to clarify the original statutory intent which was to provide continuing stewardship funding for the Lewis and Clark Trail. Ms. Gallimore provided a fact sheet regarding the Lewis and Clark Trail. The Idaho Lewis and Clark Trail fund provides for trail stewardship and education and the State Historical Society has fiscal oversight of the fund. Funding for the Trail Fund is derived primarily through revenues generated from the sale of the "Lewis and Clark" license plates and private or grant contributions. No general funds are expended on this program. The fund has an accumulated fund balance of \$212,954 as of December 2010 and it generates approximately \$2,000 per month in revenues from license plates sales.

A three year plan provides maintenance and stewardship of legacy projects.

- * Support for the Sacajawea Interpretive Center, Salmon (\$3,000/year)

- * Support for the Weippe Discovery Center, Weippe (\$3,000/year)

- * Lewis-Clark State College Lewis and Clark/Nez Perce Speakers Bureau (\$7,500/year)

- * Annual volunteer work program to preserve/clean LC Trail (\$4,000/year)

- * Competitive community grant program (\$20,000/year)

The amount invested in Idaho Lewis and Clark infrastructure and legacy programs from 2003 through 2006 was \$4,879,629. This amount came from federal, state, and private foundation money that was invested in the Lewis and Clark Bicentennial infrastructure.

There was an inquiry if the trail was complete. Ms. Gallimore responded by saying the infrastructure is mostly complete, but there is always trail stewardship and trail education. That is the role the Committee has transitioned into. Another inquiry was regarding volunteers. Ms. Gallimore said there is a volunteer committee that meets twice a year and reviews trail oversight and education planning for the use of the funding. There are also work days that are allocated out on the trail one week per year for specific work on the trails.

MOTION:

Senator Brackett made the **motion** to send H 135 to the floor with a do pass recommendation. **Vice Chairman Bair** **seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Nuxoll** will be the floor **sponsor** of this bill.

H 143:

House bill 143 was presented by **Senator Stennett**. This legislation would amend Idaho Code 36-407, relating to Fish and Game. It would provide for disabled combination licenses for nonresident American veterans participating in hunts in association with qualified organizations; to provide for nonresident disabled American veteran game tags; to provide for fees for nonresident disabled combination licenses; to provide for certain nonresident tags; and to provide qualifications.

Vice Chairman Bair asked what is a "qualified organization" and why the need? Senator Stennett deferred the question to Ms. Sharon Kiefer, Assistant Policy Director, IDFG. **Ms. Kiefer** said that she is speaking partly on behalf of Representative Patrick because IDFG did assist him with the technical development of the bill. When he came to them for technical assistance, his vision was specifically to create a program for disabled veterans that are hunting in association with a qualified organization, as already defined in Idaho Code. That definition is "a qualified organization is a governmental agency that assists veterans, or a non profit organization that is qualified under section 501 C 3 of the Internal Revenue Code, and affords opportunities, experiences, and assistance to disabled veterans." Representative Patrick recognized that creating a reduced fee structure does impose some financial burdens on the Department and the others who support the Department. His vision was specific to those who are working with organizations

who are reaching out to bring them special experiences and opportunities. One such organization is the "Wounded Warriors." When asked how many might use this, the response was there is no way to gauge it until the program is initiated.

TESTIMONY: **Mr. Monte Bruhn**, Buhl, representing the "Doug Bridges Memorial Hunts", testified in favor of the bill. He is an avid sportsman and also very patriotic. For seven years, he stated that he and his wife thought about doing something, but never did. However, after watching "Hunts for Heroes" on TV, they felt compelled to contact them and get involved.

He introduced **Mr. Pat Branch**, Kimberly, who has received three purple hearts while serving in Viet Nam and also won the Idaho Jefferson award, and **Mr. Cody Sibbett**, Burley, a wounded warrior.

TESTIMONY: **Mr. Sibbett**, representing "Doug Bridges Memorial Hunts", said that he served in the Army for six years and did two tours to Iraq. His second tour was cut short as he was hit by a roadside bomb and was burned over 45% of his body. He stated that ever since, life has been different and harder. Since his involvement in the "Doug Bridges Memorial Hunts", he has regained his determination and drive and would like to see some of his out-of-state wounded buddies have the opportunity to come to Idaho.

TESTIMONY: **Mr. Branch** said that in 2006, he won the Jefferson Award for the State of Idaho and had to go to Washington D.C. to receive it. While there, he encountered a man with his wounded daughter and he expressed his desire to take her hunting again, after she gets well. The man inquired as to the cost of a hunt in Idaho. Mr. Branch encouraged the Committee to vote for H 143.

TESTIMONY: **Ms. Kiefer** stated that the Fish and Game Commission has reviewed and supports H 143.

Currently, the Department's structure of licenses and tags provides for reduced fee license and tags only for resident disabled veteran hunters. They have a reduced fee disability combination license which, while not specific to veterans, is available and used by resident disabled veteran hunters. The Department also offers a bundled Jr./Sr./Disabled American Veteran (DAV) tag that provide reduced fee tags for deer, elk, bear, and turkey. Thus, a resident disabled veteran can purchase a disabled combination license and a DAV elk tag for \$18.00, excluding vendor fee, compared to a regular resident hunting license and elk tag for \$40.00, a savings of over 50%.

Ms. Kiefer said there is no such reduced fee license and tag structure for nonresident disabled veterans who wish to hunt in Idaho. However, this bill creates one specifically for nonresident, disabled veterans who are participating in a hunt with a qualified organization. A copy of her written testimony is on file.

MOTION: **Senator Cameron** made the **motion** to send H 143 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote. **Senator Stennett** will be the floor **sponsor** of this bill.

MOTION: **Senator Brackett** made a motion for the approval of the minutes of February 21, 2011. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

ADJOURN: **Chairman Pearce** adjourned the meeting at 2:45 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, March 07, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------------------|-------------------------|---|
| H 153 | Water Quality | Alan Prouty, Chr., IACI Environmental Committee |
| Docket No. 58-0102-1001 | Water Quality Standards | Barry Burnell, Administrator, Water Quality Div., DEQ |
| H 85 | F&G, mentored hunters | Sharon Kiefer, IDFG |
| H 94 | Injection wells | Tom Neace, IDWR |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 07, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He welcomed everyone - both those who will participate and those who will observe.

ANNOUNCEMENTS: He said there are several handouts that have been provided to aid in the presentations of the bills: Copies of Power Point slides for H 153; Idaho Special Resource Waters Map and Water Body Identification Numbers; Tier 2 Protections for Aquatic Life (single page); and a copy of Docket Number 58-0102-1001.

The **Chairman** then asked **Vice Chairman Bair** to explain the procedure that will be used in today's meeting.

Vice Chairman Bair said there would be two documents open at the same time, but voting will take place separately. Mr. Alan Prouty, will present H 153, referring to the Power Point slides and Mr. Barry Burnell, Administrator, Water Quality Division, DEQ, will present the Water Quality Standards Rule, Docket Number 58-0102-1001. There will be side-by-side comparisons of the two documents, with voting first on the Rule, followed by the bill.

SPEAKER: **Mr. Prouty is Chairman of the Environmental Committee for the Idaho Association of Commerce and Industry (IACI), and is the Vice President of Environmental and Regulatory Affairs for the J. R. Simplot Company.**

Mr. Prouty said the whole subject of anti-degradation is fairly complex. He provided some background information to help understand the issue. The federal Clean Water Act (CWA) requires states to protect the existing uses of all state waters and to protect high quality waters from degradation. This is known as anti-degradation. Essentially, if a water body has water quality that exceeds water quality standards, then the quality of that water cannot be "lowered" or degraded unless specific criteria are met.

Federal law requires the state to have both an anti-degradation policy and "methods" for implementing the policy. Waterbodies are typically classified (for anti-degradation purposes) into three tiers:

Tier I: requires that existing uses and the water quality to protect these uses shall be maintained and protected;

Tier II: where water quality exceeds that necessary to protect existing uses and mandates that any action that could lower water quality be approved only after certain processes (economic evaluation, public participation);

Tier III: applies to outstanding national resource waters where existing quality regardless of existing uses "shall be maintained and protected."

The State of Idaho has an anti-degradation policy in its existing regulations; the issue is the "methods" for implementation of this policy.

In April, 2010, the Idaho Conservation League (ICL) filed a complaint in federal court claiming that Idaho has not promulgated an anti-degradation implementation plan and is in violation of the Clean Water Act. ICL is seeking the court to order EPA to promulgate an anti-degradation implementation plan regulation for Idaho.

The State of Idaho Department of Environmental Quality (DEQ) started in April 2010 a rulemaking process to develop an anti-degradation implementation plan regulation. It is very important for Idaho to have an anti-degradation implementation plan that Idaho has written. In November 2010, the Board of Environmental Quality approved an implementation rule. Sixteen different trade organizations were interested. The proposed regulation does add requirements, "regulatory process" (i.e., time and expense) to obtaining a new or renewal of a wastewater, stormwater or other type of general permit related to a water discharge. For example, obtaining a stormwater construction permit or multi-sector general permit, which right now is a relatively straightforward and simple process, could now be potentially subject to an extensive time consuming and expensive process to prove that any discharge is not harming Idaho's waters.

As the regulated community looked at the rulemaking, they focused on four main elements.

- Consistency with CWA (protection of environment and stringency).
- Practicability: additional work and timing of getting approvals for permits.
- Effect on business/community development.
- Minimizing the potential for future litigation.

Their goal was to develop a regulation that provides the necessary protection for water quality while still providing a water discharge permitting process that is workable for Idaho business. The rulemaking addressed almost all of these factors; however, at the conclusion of the rulemaking they believed that several changes were still needed.

What they are suggesting are some changes in the rule. Rejections are the language of degradation, descriptions of general permits, how high quality Tier 2 waters are identified and the criteria for determining insignificant activity or discharge. There is language in H 153 that provides the replacement language. Mr. Prouty stated that H 153 has other language that is needed to incorporate the anti-degradation rule. IACI did meet with DEQ to discuss the potential changes in the statute and the rejection of Rule language. Some recommendations were provided by DEQ and they were incorporated into this proposed legislation.

He stated that there are four main pieces that have replacement language in the bill. The first one is the definition of degradation (or also known as "lower water quality"). What they are trying to do is to preserve the concept of measuring the adverse change and also incorporating the use of monitoring data. The second change is how general permits are described. The third major change is the identification of Tier II waters. The final piece has to do with what is considered an insignificant activity or discharge. Two criteria had been proposed to determining what is insignificant discharge or activity. Based on some EPA action in other states, they felt that the criteria could be modified to just a single criterion and that is why they proposed the change.

Mr. Prouty said that on page 1 of the bill, there is a Declaration of Policy. This is amended to clarify that these laws and accompanying rules apply to "navigable waters of the U.S." They do not want this law and applicable rules to apply to certain man-made waters and other waters that are not subject to federal rules (i.e., irrigation ditches, return water, canals, private ponds). State rules designate certain waters of the state as Special Resource Waters. It is not clear how these designations are to be handled under this anti-degradation implementation procedure. Also, this legislation has language that clarifies that any water body designated as a special resource water is treated like any other water body for purposes of anti-degradation review.

Chairman Pearce thanked Mr. Prouty for his presentation.

Senator Tippetts disclosed that his employer will be directly affected by this legislation.

SPEAKER:

Mr. Barry Burnell, Administrator, Water Quality Division, DEQ stated that he wanted to review some of the elements that DEQ has in H 153. The first part is the definition of navigable waters in the United States. He feels that it is appropriate and is a part of the Clean Water Act and the additional changes are helpful. Section two of the bill brings up the definition of degradation. The current definition of degradation or lower water quality was constructed with the intent of looking back at how a water became impaired (or degraded) and that it is measurable because the degradation has occurred. Anti-degradation is a protection requirement of the Clean Water Act and because the activity has not occurred, it is a predictive exercise. Because the Anti-degradation review of point source and nonpoint source impacts has yet to occur, the method to estimate impact or degradation has to be based on calculations and can't be based on measurement. Anti-degradation applies when the federal government issues a permit or license, as is the case with EPA's NPDES permits, the US Army Corps of Engineers 404 dredge and fill permits, and the FERC hydropower licenses and relicenses. The scope of the anti-degradation is for those three types of permitting.

Mr. Burnell said that on page 7 of the bill, there are three policy decisions that have to be made. The first decision is on lines 10 and 11, defining Tier I waters and Tier II waters. All waters of the state are Tier I waters. Tier II waters are the high quality waters. In this section is where sediments and nutrients have been removed from the list of pollutants that were put forward in the pending rule. On the single page handout that Mr. Burnell provided, 46 waterbodies are listed for either nutrients or sediments. By accepting the language in H 153, these 46 waterbodies would have Tier I protection only. Mr. Burnell said this is a policy decision that the Committee needs to address.

The next policy decision is on page 7, lines 20 and 21, special resource waters and they were designated in 1980 and 1985. The second handout, with the map, is a graphic that displays where those special resource waters are. There are 283 waterbodies that are identified as special resource waters. The following pages of the handout lists information about those waterbodies. In the 1980's, the Water Quality Advisory Committees were used to identify these, so essentially, sportsmen and water users in the State of Idaho nominated the streams that they felt needed additional protection for designation of special resource waters. The definition is "those segments of waterbodies which are recognized as needing intensive protection to preserve outstanding or unique characteristics or to maintain a current beneficial use." Removal of special resource waters from the Rules would put those waterbodies into either Tier I or Tier II, dependent upon if they have an impairment listed in the integrated report.

The last policy issue is on page 7, lines 29 through 33 and talks about how the department shall identify insignificant waters. What is needed is a 10% assimilative capacity.

There are two other sections of the bill that are both needed and necessary, and the language that is added, Mr. Burnell said they agree with it. That concluded his presentation.

TESTIMONY: **Mr. Justin Hayes, Program Director, Idaho Conservation League (ICL)**, testified that ICL is not supportive of the rule. He said they feel it does not go far enough to protect the water quality in Idaho. They are also not supportive of the legislation that is before the Committee. He said the changes that are being proposed in this legislation make it much more likely that EPA will not approve the rule. Should EPA approve that rule, ICL will challenge it in court.

TESTIMONY: **Mr. Dale Atkinson**, representing himself, said he didn't understand why more rules are needed to protect the environment. He feels there is less cause for pollution because the economic activity has been reduced.

TESTIMONY: **Mr. Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators (IGWA)**, was next to testify. He said he was part of the negotiated rulemaking, representing 13 of the cities that are on the Eastern Snake Plain Aquifer (ESPA). About half of them are dischargers to the Snake River and will be affected by this particular legislation. As far as stakeholders, there were developers, irrigators, cities, industrial users, and conservation groups. During the discussions of the negotiated rulemaking, 90 to 95% of the people involved agreed with what IACI was doing. Mr. Tominaga said the Association of Idaho Cities is in favor of the Rule and H 153, as well as the 13 cities that he represents.

Mr. Tominaga said to answer a question regarding the special resource waters, there were rivers or streams listed such as Soda Creek (because of the soda) and Panther Creek (high content of arsenic) that had nothing to do with water quality standards. When water is designated as Tier II, it has to be proven that it will not degrade or have a significant impact on that water body. That is one of the major concerns regarding Tier II.

In the present Rules, there is basically a 10% leeway and that has been determined by other states' rulings from different parts of the EPA. The question is – how long do you reserve that? It is an issue that is going on now.

Because of the controversy of the Rule, Mr. Tominaga said they are developing guidance as they are doing the Rule. He said to remember - always do the law, then the interpretation of the Rule, then do guidance, if there is a question as to what the Rule means. He feels that all three things are being done at the same time and wondered if it had ever been done before. He stated that there will be another meeting two weeks from now and he also wanted the Committee to know that ICL plans to sue, no matter the outcome.

TESTIMONY: **Mr. Jack Lyman, Executive Director, Idaho Mining Association**, testified next. His remarks were concerning the process. He was part of the original anti-degradation negotiations 22 years ago. The Senator that implemented it was Senator Tominaga. He said when they did negotiated rulemaking, they brought all the parties together, agreed on ground rules as to what would constitute consensus. Twenty two years ago, they defined consensus as everyone agreeing; however, if one party objected, they could go forward, but if two objected, they worked to reach consensus. About 10-15 years ago, they decided two-thirds of the group was a consensus.

At the initial meeting of this rule, it was asked if they were going to define consensus among the parties. The Department (DEQ) determined that they would not. They asked if votes would be taken and the Department said no. When they asked about minutes being taken so that they could document the decisions that had been made, and the discussions that had taken place, again the Department said they would not. Mr. Lyman said the Committee, as well as the Department, worked hard to try to reach consensus position, but ultimately, it didn't matter. If 90% agreed on something, but wasn't what DEQ thought would work, then they (DEQ) would tell them what they wanted. The DEQ Board was approached in November 2010, to let them know the concerns that the Committee had (most of which are reflected in H 153). The DEQ Board accepted some, but failed to accept others. Mr. Lyman said the Committee is not going back on any commitments that were made - there was no consensus - and they have indicated to DEQ, from the beginning of this process, that they reserved the right to use all means available to make sure the Legislature was made aware of the concerns they had and what they thought would help to go forward.

Chairman Pearce asked Mr. Lyman if he thought that what the Legislature was doing was in any way hampering any development in the mining industry in Idaho? Mr. Lyman's response was yes - it is more stringent than what they have been doing before; however, they understand the need to do it and they understand the need for federal permission and there will be less mining in Idaho as a result of this. He doesn't feel it will be a significant decrease, but it will be more expensive and will take more time. The mining industry accepts and supports the State developing the anti-degradation implementation plan so that they can go forward.

DOCKET NO. **Chairman Pearce** reminded the Committee that a hearing was held on this rule, **58-0102-1001** but was held until other legislation was reviewed.

Vice Chairman Bair said that he would like to make a motion and it will be consistent with a concurrent resolution that has been voted on both in the House Environment, Energy, & Technology Committee and the floor of the House.

MOTION: **Vice Chairman Bair** then made a **motion** to approve Water Quality Standards Pending Rule Docket Number 58-0102-1001 with the following sections rejected: Page 123, 010.19 - Degradation or Lower Water Quality; Page 135, 052.03 - General Permits; Page 135, 052.05 - Identification of Tier II Waters; and Page 137, 052.08.a - Insignificant Activity or Discharge. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by majority vote. **Senator Werk** voted **no** and asked to be recorded as such.

MOTION: **Senator Tippets** made a **motion** to send H 153 to the floor with a do pass recommendation. The motion was **seconded** by **Vice Chairman Bair**. A roll call vote was requested. Voting **aye** were Senators Tippets, Heider, Brackett, Siddoway, Cameron, Vice Chairman Bair, and Chairman Pearce. Voting **nay** were Senators Werk and Stennett. The vote was 7-2 in **favor** of the motion. **Vice Chairman Bair** will be the floor **sponsor** of this bill.

H 85:

Ms. Sharon Kiefer, Assistant Director of Policy, Idaho Fish & Game, spoke in regards to H 85. She said that a 2002 national survey of hunter recruitment rates found that only 6.3% of Idaho's population of children, age 6 to 15, were hunters and 15.5% of the population age 16 and older were hunters. The national average was 4.2% of kids age 6 to 15 and 6.1% of people aged 16 and older, so while our percentage of older hunters was much higher than the national average, our youth statistic was lower. According to this survey, Idaho's youth hunter replacement ratio of 0.41 was lower than the national of 0.60.

Nationally, states are deploying a variety of tools for their toolbox of hunter recruitment. One of the tools that many states have developed is a Mentored Hunting Program, also called Hunter Education Deferral or Apprentice Hunting. Although often aimed at youth, these programs can apply to all ages; we want hunting to be a lifetime sport. Generally, these programs provide a mechanism to allow any person who has not yet received hunter education certification or acquired a hunting license to receive special authorization to hunt for a prescribed time period, usually no more than a year, while accompanied by a licensed mentor. This allows the mentored hunter to experience hunting such as with a family member before pursuing hunter education to get a hunting license in Idaho. Who could present a more positive and cherished experience to spark an interest in a lifetime sport than a supportive mentor? Not surprisingly, states that have deployed mentored or apprentice hunting programs report generally positive experiences with the program. However, few have yet published information related to the number of mentored hunters that ultimately become licensed hunters. To date, Minnesota has the most comprehensive information about mentored hunters converting to hunter education certified license purchasers. About 37% of mentored hunters moved forward with hunter education and about 30% purchased licenses.

Currently in Idaho, unless specifically exempted from licensure in Idaho Code 36-401, no person can be issued a hunting license if they are born after January 1, 1975 (36 years old) unless they previously held a valid hunting license in Idaho or another state or unless they present certificate of completion in hunter education from Idaho or the equivalent from another state or country. House Bill 85 would give the Commission discretionary authority to work with stakeholders such as sportsmen, families, and the Idaho Hunter Education Association to create rules for a mentor hunting program. As with other rulemaking conducted by the Commission, this would be a public process including further research into the safety and violation record of mentor hunt programs across the nation and with further evaluation of the efficacy of this program as a recruitment tool. Currently, we find that many of the students who complete hunter education in Idaho do not purchase a hunting license so the benefit of developing a mentor hunt program may be two-pronged. It may help increase the number of students who would take hunter education anyways arrive in class already committed to hunting because of positive experiences, who will follow through with not only hunter education investment but also become a licensed hunter and it may help recruit new hunters who might not have taken hunter education to pursue hunter education and get a hunting license.

The bill amends several sections of Idaho Code to create opportunity for a mentor hunt program.

1. In Section 1, the Fish and Game Commission authorities in Idaho Code 36-104 are amended to allow the Commission to adopt rules governing a mentored hunting program (b), page 4, line 39).
2. In Section 2, a new license exemption is added to Idaho Code 401 that allows mentored hunters participating in a program prescribed by the commission to apply for a special authorization to take wildlife while accompanied by an adult (age ≥ 18) licensed to hunt. The authorization will be valid for a specific period of time and once invalid, all requirements of Idaho Code 36-411 requiring hunter education certification for licensure will apply. In no way does this bill exempt the requirement for hunter education certification to obtain a hunting license.
3. Section 3 incorporates "authorization" in Idaho Code 36-409 as a mechanism to hunt because the mentored hunter will be exempted from licensure.

Ms. Kiefer said that the Fish and Game Commission and the Department asks for your "Do Pass" recommendation for this bill.

MOTION:

Senator Heider made the **motion** to send H 85 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Tippetts**. The motion **passed** by unanimous voice vote. The **sponsor** of this bill is **Senator Heider**.

ADJOURN:

Chairman Pearce adjourned the meeting at 3:05 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AMENDED #1 AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 09, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|----------------------------------|---|---------------------|
| <u>RS20583</u> | To provide for limitations on powers relating to the enforcement of certain federal laws and regulations. | Chairman Pearce |
| Gubernatorial Appointment | Committee hearing for the Gubernatorial appointment of Charles Cuddy to the Idaho Water Resource Board to serve a term commencing January 1, 2011 and expiring January 1, 2015. | |
| <u>H 94</u> | Injection Wells | Tom Neace, IDWR |
| <u>H 84</u> | Outfitters and guides, fees | Jake Howard, OGLB |
| <u>H 136</u> | Watermasters | Tim Luke, IDWR |
| <u>H 137</u> | Alteration, channel of streams | Norm Semanko, IWUA |
| <u>H 138</u> | Irrigation, buried conduit | Norm Semanko, IWUA |
| <u>HCR 16</u> | Environ quality dept., rules rejected | Rep. Hartgen |
| <u>H 22</u> | Water right licenses | Shelly Keen, IDWR |
| <u>H 24</u> | Water, notice | Shelly Keen, IDWR |
| <u>H 25</u> | Water/permits to appropriate | Shelly Keen, IDWR |
| <u>H 31</u> | Water, permit application fees | Gary Spackman, IDWR |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce

Vice Chair Bair

Sen Cameron

Sen Siddoway

Sen Brackett

Sen Heider

Sen Tippetts

Sen Werk

COMMITTEE SECRETARY

Juanita Budell

Room: WW37

Phone: (208) 332-1323

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 09, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: The meeting was called to order by **Chairman Pearce** at 1:30 P.M. He announced that the first order of business was to approve some minutes.

MOTION: **Senator Cameron** made the **motion** to approve the minutes of February 28, 2011 as written. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Heider** made the **motion** to approve the minutes of March 2, 2011 as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

PASSING OF GAVEL: **Chairman Pearce** passed the gavel to **Vice Chairman Bair** so that he could present RS 20583.

RS 20583: **Chairman Pearce** said the purpose of this legislation is to provide for limitations on powers relating to the enforcement of certain federal laws and regulations. It is another leg for Senate bills 1015 and 1016, which will be heard on Monday, March 14. The Chairman asked for unanimous consent to send the RS to a privileged committee for printing.

MOTION: **Senator Siddoway** asked for **unanimous consent** to send RS 20583 to Judiciary and Rules, a privileged committee, for printing. There were no objections. The request passed unanimously.

PASSING OF GAVEL: **Vice Chairman Bair** returned the gavel to Chairman Pearce.

GUBERNATORIAL APPOINTMENT: **Chairman Pearce** then called upon **Mr. Charles Cuddy** of Orofino, Idaho who was appointed to the **Idaho Water Resource Board (IDWR)** to serve a term commencing January 1, 2011 and expiring January 1, 2015. He asked Mr. Cuddy to update the Committee – tell about his career, reason for serving on the Board, and anything else he would like for them to know.

In Mr. Cuddy's bio, it stated that he feels his past experience in the political realm, the private sectors, and as a public employee, will serve him well as a member of IDWR. He currently owns a surveying and consulting business and has experience with boundary surveys, road and street projects, water and sewer systems, bridges, log handling facilities, experimental streams, hydroelectric projects, subdivisions, city planning and piping projects.

Mr. Cuddy graduated from Kendrick High School, attended Lewis-Clark State College, and obtained his professional land surveyors license February 1973. He has served on the following Boards: Clearwater Valley Hospital, Riverside Water and Sewer, Orofino Chamber of Commerce, and IDWR, 2007-2011. Mr. Cuddy was also appointed and elected as an Idaho State Representative, District 7 and 8, from 1991-2004. He served on the following committees: Resource and Conservation ; Revenue and Taxation, and sub-committee chairman; Transportation and Defense; Legislative Council, Rivers Governance; Federal Lands Pilot Project; Co-chairman Federal Lands Task Force; Western States Forestry Task Force; and the Joint Resource Committee.

As an IDWR board member for the past four years, he said the Board has been working to update the State Water Plan, also working closely with the Rathdrum group preparing a Rathdrum Aquifer Management plan, and trying to increase Idaho water storage. Mr. Cuddy would like to continue working on all of these issues.

Senator Cameron asked Mr. Cuddy what he felt would be the most difficult issues that water users may face, from his perspective, and your feeling about the prior appropriation doctrine. **Mr. Cuddy** responded by saying, "Not being an attorney, prior appropriation doctrine is something that we need to follow. The seriousness of the water situation, particularly in the Snake River Basin, depends a lot on what nature does to us. At some point in time, we have to find a method to replace the water that has to come out of Eastern Idaho and go down river for fish." He said that he sees the ultimate answer to that as more storage, wherever it is, so we can send that water without dipping into what is needed for agriculture and other industries.

Senator Cameron said that he agrees with what Mr. Cuddy just stated. He then asked for his thoughts on recharge and how we might, in good water years, take advantage of excess water before it flows out of the state and how we might restore and recharge the aquifer in Southern Idaho. **Mr. Cuddy** replied that IDWR has put a lot of effort into recharge and they have done some exploration (with some turning out not as they had hoped) and decided money would be better spent exploring other avenues. He said that in looking back, maybe they should have taken more advantage of open ditches, and when they have excess water, let them assist in recharge. Recharge is something they have to make an effort to do.

Chairman Pearce told Mr. Cuddy that he was glad to see him and pleased that he was on the Board for IDWR. Voting will take place next Monday, March 14.

H 94:

Mr. Tom Neace, Geologist and Manager of the Ground Water Protection Section for IDWR, addressed H 94, relating to injection wells. He provided a fact sheet for the Committee and it is as follows: Four major revisions are needed and the revisions are proposed to correct conflicts between Title 42, Chapter 39 and the minimum federal regulatory requirements. This includes:

1. Modification of the definition of an injection well (Page 2, lines 13-24);
2. Removal of the exemption for shallow injection wells that are used for storm water from building roof drains (Page 4, lines 3-5)
3. Updated definition of "Irrigation Waste Water" to include precipitation runoff (Page 2, lines 25-30)
4. Updated definition of "Sanitary Waste" to exclude industrial, municipal, commercial or other nonresidential process fluids. This clarifies the exemption for residential and business drain fields by excluding process fluids from drain fields (Page 3, lines 1-4)

Failure to correct these conflicts could jeopardize State primacy for the Underground Injection Control (UIC) Program and the Federal funding for the program.

Other changes:

The proposed modifications will provide clarification and consistency with the Idaho Rules for the Construction and Use of Injection Wells IDAPA 37.03.03. The rules for the Construction and Use of Injection of Injection Wells refer to shallow injection wells (those less than 18 feet below ground surface), and deep injection wells (those greater than 18 feet below ground surface). "Waste Disposal" is an outdated term. We are proposing to remove the term "Waste Disposal".

MOTION:

After a short discussion, **Senator Tippetts** made the **motion** to send H 94 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Tippetts** will be the floor **sponsor**.

H 84:

Mr. Wayne Hunsucker, Outfitters and Guides Licensing Board Chairman, (OGLB) presented the opening remarks for H 84. He stated that the Board is comprised of three outfitters, one public representative (Mr. Hunsucker), and one person from the Idaho Fish and Game Commission and all take their duties seriously. The charge of the Board, as required by law, is to safeguard the health, safety, and welfare of the public and for the conservation of wildlife and natural resources. In doing that, part of what they do is license outfitters and guides, manage license operating areas, allocated big game tags and etc. Increasingly, that role has taken on more involvement with the federal agencies, such as the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM). What the Board has found, over the years, is that the staff has an increased workload of the many tasks that they are required to do. They have been streamlining their process to keep costs down; however, costs are rising yearly.

Mr. Hunsucker said they work closely with the Idaho Outfitters and Guides Association (IOGA) and, as well as other industry representatives, have come up with a fee compromise that is supported by them. OGLB is a self-governing agency and receives no money from the State's general fund, and is solely funded by the outfitters and guides fees. The increase that is being asked for is to maintain the services that are provided to the outfitters and guides.

A question was asked about membership in IOGA. The reply was that at times, it is 60%, but has dropped to 40%. Another question was if the fee increase is not approved, how will it impact OGLB? Mr. Hunsucker said it will largely affect education and enforcement activities and also added that there are additional concerns involving increased legal fees defending the Board's license actions and appeals.

Senator Cameron had questions concerning the budget of OGLB and asked for an explanation of the request for an additional \$25,000 for personnel costs and to maintain a contingency of \$35,000. Mr. Hunsucker deferred the question to Mr. Howard.

Mr. Jake Howard, Executive Director, OGLB, said first he would like to clarify that the Outfitters and Guides Licensing Board is a self-governing, state agency and is a separate entity from the Outfitters and Guides Association, which is a private industry advocacy organization. In response to Senator Cameron's question, the \$25,000 request was withdrawn, and \$537,000 was appropriated for FY 2012, which would be \$900 less than current. He provided an overhead chart from which he explained the incremental increases. He said while it would go into effect in July, it would not be noticed by most licensees until January, 2012 when they renew their licenses.

Mr. Howard said the fee increase was actually proposed last year, but was withdrawn because of questions regarding moving fees from statute to rule. Since then, they have worked with the industry and IOGA, and in June, a fee increase was presented and agreed upon by IOGA's Executive Committee. This increase was presented to the industry at IOGA's Winter meeting in December where 59 of 60 outfitters attending, agreed to the increase. However, later, IOGA's Executive Committee had mixed feelings, so a compromise was reached that was nearly half of the initial proposal.

The education and enforcement program is a primary concern and that is helping the industry understand what they need to stay in compliance with state outfitter and guide laws. They educate first and then deal with disciplinary matters if and as needed. The priority is to be consistent and part of the difficulty they have with the education/enforcement program is providing competitive wages, particularly with the part-time enforcement staff who might only work a few hours a month. He stated they largely employ retired law enforcement professionals who are not interested in working for \$12 per hour.

Mr. Howard said OGLB, being an administrative enforcement agency, there are two different types of enforcement - criminal enforcement for activities and administrative enforcement for inappropriate activity by licensed individuals. The point being, they need law enforcement personnel in the field to take the lead and work with the Fish and Game officers and local sheriffs. If an actual arrest is to be made, it is usually by the full-time law enforcement personnel of the Fish and Game Department or a sheriff. He mentioned an illegal activity on the South Fork two years ago which resulted in a conviction, brought about by OGLB's former chief and Fish and Game officers.

Senator Tippetts questioned why Fish and Game did not take the lead in Outfitter and Guide enforcement. **Mr. Howard** said the difference is between criminal enforcement and administrative enforcement. Fish and Game's focus is on criminal activities, typically relating to fish and wildlife type issues. Not all of OGLB's illegal activities are fish and wildlife issues and not all are criminal. He said the Board needs a presence of their own to deal with administrative matters.

Senator Cameron wanted to know why attempt to compete, from a salary perspective, with enforcement officers who have had the necessary training and are POST certified. He stated that he has a hard time raising fees due to the economic conditions the state is facing. **Mr. Howard** responded in that they were really not attempting to compete, but in order to have people in the field doing law enforcement work, it is appropriate for them to have appropriate training accomplished through POST certification. This was for their own protection and for them to understand the processes needed to effectively deal with various kinds of enforcement activity, including bringing the cases together for prosecution.

Senator Cameron stated that he wasn't convinced, as yet, regarding raising fees to raise salaries. He then asked why have additional duplicity enforcement arms with IDFG. **Mr. Howard** said it is not duplicated, but they are doing things together from time-to-time, but the enforcement of Outfitters and Guides' laws, from an administrative standpoint, is statutorily required of the Board. Mr. Howard emphasized a decision had not been made to increase the wages and the Board's ability to coordinate what they do and to work with other agencies is under duress due to the lack of funding.

Senator Siddoway inquired as to what the difference was between a fee and a tax. **Mr. Howard** responded by saying that the difference is, as he sees it, is OGLB is a dedicated fund self-governing agency and has the specific responsibility to a specific user group, the Outfitters and Guides and their designated agents (IOGA). The fee that is charged to them (and the increase) is something they support. They believe that what OGLB does is beneficial to them. **Senator Siddoway** then asked if furlough days had been utilized. **Mr. Howard** replied that they had not furloughed anyone, but they have eliminated their part-time contract licensing staff, saving \$25,000 annually. He also added that when it comes to efficiency and effectiveness of an agency, the Board believes the review should be relative to the individual agency on a case-by-case basis. He said OGLB's belt is rather tight, "the juice has been pretty well bled from the turnip", and they were operating efficiently. If one of the licensing staff is eliminated, it will directly and immediately affect the customer service that they provide to the industry. He also said that if the enforcement program is curtailed any further, it will be detrimental to the industry because of some problems that they are already facing with illegal activity.

Mr. Howard closed by saying that in the Board's strategic planning, completed in 2008, the #1 priority was to address the unlicensed and illegal activities and it takes money to do so.

TESTIMONY: **Mr. Randy Berry** testified in support of H 84. Following is a copy of his testimony.

To the Resources Committee: I want to voice my full support of House Bill 84, the increase of outfitter and guides licensing fees paid to the Idaho Outfitters and Guides Licensing board. My family business, Teton Valley Lodge, has been outfitting in Teton Valley, Driggs, Idaho since 1919. We are the oldest fly fishing outfitters in the U.S. I have been outfitting and guiding for over 50 years. We employ about 25 people in Idaho.

Finally, after 30 plus years of effort on the part of eastern Idaho outfitters of encouraging the IOGLB to truly enforce the outfitting laws of our state, we have seen some headway. As you know, the IOGLB has always been underfunded. However, the past three years have seen some real progress in enforcement regarding illegal outfitting in Idaho.

Now, partly because of some unexpected legal expenses brought on by an alleged illegal outfitter, the Board is in a financial pinch which threatens its' ability to continue much needed enforcement. Outfitters have been disappointed for decades at the lack of enforcement by the State. We have always been willing to pay higher fees which would go toward enforcement. I personally requested the State double outfitter and guide licensing fees and the penalty fees 20 years ago. This was accomplished through the legislature.

I am again asking the legislature to increase our fees to help us in the continuing battle against illegal outfitting.

The fee increase is only \$25.00. I wish it were \$100.00. I don't know an outfitter who disagrees with this increase. I have been involved with the IOGLB since 1960. I have watched illegal outfitting run rampant here in eastern Idaho. The IOGLB is our only hope to contain this statewide problem.

Please support this increase in fees and help we outfitters and the Idaho public get a fair shake by helping the IOGLB to curb illegal outfitting.

We outfitters will do our part by paying the increase. Will you please do your part by allowing us to do so legally.

Senator Cameron said that he appreciated Mr. Berry's comments and it helps him to understand a little better. He said he also feels that Mr. Berry has a valid concern. Senator Cameron said that the budget is \$537,000, up from \$499,000 last year, and this fee increase would generate \$50,000. He asked Mr. Berry if he thought \$50,000 would make that dramatic of a difference in enforcement and why wouldn't he believe that adjusting the priorities within their existing budget would be a better solution than raising fees? **Mr. Berry** replied that there is an alleged illegal outfitter in his area who has caused expenses to the Board. He stated that it is also very expensive to do undercover work, plus the penalties for illegal guiding are too low and they (penalties) are viewed as a joke.

TESTIMONY: **Mr. Grant Simonds, Director of the Idaho Outfitters and Guides Association (IOGA)**, testified in support of H 84. He said they view the Licensing Board as a strong buffer for federal regulations (by BLM and USFS) in the industry and it is becoming particularly important, especially when businesses are transferred, sold, or bought. He stated that administrative efficiency, within the Licensing Board, has increased dramatically and there is a pro-active and "can do" attitude by the staff and that is very much appreciated by the outfitters and guides.

SUBMITTED WRITTEN TESTIMONY: **Mr. Mike Lawson, Manager, Henry's Fork Anglers, Island Park**, submitted written testimony in support of H 84. A copy of his testimony is on file.

TESTIMONY: **Mr. Wayne Hoffman, Executive Director, Idaho Freedom Foundation**, testified in opposition to H 84. He said every agency in Idaho could testify that they don't have enough money or employees, and have more demands and workload, but not enough resources. Mr. Hoffman said the increase is a tax, not a fee, and asked for a "no" vote.

MOTION: **Senator Stennett** made the **motion** to send H 84 to the floor with a **do pass recommendation**. The motion was **seconded** by **Senator Brackett**. A **roll call vote** was requested. Voting aye were Senators Werk, Stennett, and Brackett. Voting nay were Senators Tippetts, Heider, Siddoway, Cameron, Vice Chairman Bair, and Chairman Pearce. The **vote was 3-6**, and the motion was **defeated**.

ADJOURN: **Chairman Pearce** adjourned the meeting at 3 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AMENDED #1 AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Auditorium WW02
Monday, March 14, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|----------------------------------|---|------------------|
| Gubernatorial Appointment | Committee consideration for the Gubernatorial appointment of Charles Cuddy to the Idaho Water Resource Board to serve a term commencing January 1, 2011 and expiring January 1, 2015. | |
| <u>S 1015</u> | F&G, motorized vehicle/transport | Sen. Corder |
| <u>S 1016</u> | F&G, motorized vehicles | Sen. Corder |
| <u>S 1159</u> | Limitations on powers relating to the enforcement of certain federal laws and regulations | Sen. Pearce |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 14, 2011

TIME: 1:30 P.M.

PLACE: Auditorium WW02

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. and announced that the first order of business would be to consider the appointment of Charles Cuddy to the Idaho Water Resource Board. His term is from January 1, 2011 to January 1, 2015.

GUBERNATORIAL APPOINTMENT: **Senator Cameron moved** to send the gubernatorial appointment of **Charles Cuddy** to the Idaho Water Resource Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Werk seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be the **sponsor**.

ANNOUNCEMENT: The **Chairman** said that the three bills that are to be heard today will all be "on the table" at the same time. Senator Corder will address S 1015 and S 1016 and Chairman Pearce will explain S 1159. Testimony will be taken following the opening remarks and will be limited to three minutes per person, due to the number of people signed up to testify. Vice Chairman Bair will be the timekeeper.

S 1015 and S 1016: **Senator Corder** stated that he understands that these bills have contentious issues and he hopes to resolve these issues. He asked, "What is the role of agencies and what is the role of the Legislature?" The Senator said that this is a case of where an agency has taken a statute and by authority (given by the Legislature), they can then promulgate rules. Over time, that promulgation exceeds that original authority and this debate is about if that has happened, and if it has, what should we do about it? The assumption is that ATVs are used as an "aid to hunting" or "methods of take" are an issue. Senator Corder said these bills are about allowing the people's voices to be heard and the voices are not in agreement.

Senator Corder said what S 1015 and S 1016 do not do is make anything legal that was illegal. The bills affirm that the subordinated right of the Fish and Game to make calls about whether certain activities with hunting are illegal and affirm that once that occurs, they continue to be illegal. These bills will not undo any of that. These bills recognize that other tools that the Fish and Game have at their disposal must be used to accomplish their goals of game management.

Vice Chairman Bair requested that Senator Corder tell what S 1015 and S 1016 do. **Senator Corder** said that S 1016 says that the department may not promulgate rules that would allow a motorized vehicle to be defined as a "method of take" or an "aid to hunting". S 1015 says that motorized vehicles may be used for transportation purposes, when not in violation of specified law.

Senator Tippetts inquired if there is in code, or a recognized definition, of hunting from a motorized vehicle. **Senator Corder** replied that he didn't know of such. **Senator Tippetts** then asked if it was generally accepted that hunting from a motorized vehicle is actually shooting while in or on a motorized vehicle? **Senator Corder** said that was correct.

Senator Cameron said that as he reads the bills, there is not a concern with the Department issuing rules that will prohibit the use of ATVs off trails or off designated roads. **Senator Corder** said that was correct. **Senator Cameron** then said that the intention of the bill, as well as Senator Corder's testimony, indicates that it ought to be the legislature's purgative to determine public policy, but he also hears the Senator asking for consistency in how motorized vehicles are treated. **Senator Corder** said that was correct.

**PASSING OF
GAVEL:**

Chairman Pearce passed the gavel to **Vice Chairman Bair** so that he might explain S 1159.

S 1159:

Chairman Pearce said they got together and talked about S 1015, S 1016, and S 1001 (which is under the Transportation Committee and is now in the 14th Order on the calendar in the Senate). Senate bill 1159 is to provide for limitations on powers relating to the enforcement of certain federal laws and regulations. Presently, the Fish and Game officers are being used to enforce federal road closures and many are opposed to the Forest Service closing the roads that could be used by the public.

Senator Werk asked if this legislation had been reviewed by the Attorney General and the answer was no. **Chairman Pearce** said it was, however, looked at by two attorneys. He also stated that it isn't very often that state personnel is used to enforce federal mandates.

**PASSING OF
GAVEL:**

Vice Chairman Bair passed the gavel back to the **Chairman** and said they would proceed with testimony.

TESTIMONY:

First to testify was **Fish and Game Commissioner, Tony McDermott, from the Panhandle Region**. A copy of his testimony on S 1015 and S 1016 has been inserted into the minutes.

Chairman Pearce and Committee Members:

Thank you for the opportunity to provide the Commission's policy perspective about these bills. You have a written copy of my testimony. Jim Unsworth from the Department will provide technical information to support my policy testimony.

The Commission opposes Senate Bills 1015 and 1016. These two bills would negate existing Commission authority to regulate motorized vehicles as an aid to hunting. As you know, the Commission first approved the motorized vehicle rule for hunters (MVR) in 2002 and several legislatures have upheld this rule as recently as 2010 when new hunt units (66A and 76, Diamond Creek zone) were added. Past legislative approval included many of you. When the Commission met with the Senate Resources and Environment Committee on January 26, Commissioner Budge provided a briefing about the rationale of why the Commission should manage motorized vehicles as an aid to hunting. I have attached that briefing to my testimony.

The Commission did not develop this rule on a whim or to create conflict with other motorized recreationists. We did so because we overwhelmingly heard from hunters that this was their desire - hunters have told us again and again that restrictive measures that uphold their expectations for continued general season hunting every year and for big buck deer and bull elk are acceptable and a priority. Off-road motor vehicle restriction is a measure they support, both to limit harvest vulnerability of big game in remote areas and to ensure general opportunity. Note, I emphasize harvest vulnerability as the core issue, the MVR is not about generic big game disturbance and it is not about habitat protection. As a matter of policy, when it comes to key decisions about hunting opportunity, hunter access, and the quality of the herds for hunting, the Commission has listened primarily to hunters - that strikes me as appropriate. We have heard regularly that hunters are unwilling to give up annual hunting opportunity to manage for more and larger bucks and bulls. Hunters have routinely identified motorized access hunting restrictions as one of the most acceptable measures to retain annual hunting opportunity AND manage for quality. We also understand that our hunters desire a diversified range of hunting experience, including non-motorized.

If overturned, the direction and desire of many hunters will also be overturned. Hunters unwilling to give up annual hunting opportunity to manage for more and larger bucks and bulls will be forced to choose general opportunity or quality as the Commission has to reassess management objectives and frameworks for affected units. Reduced opportunity in some form will be a likely outcome leading to hunter dissatisfaction and undoubtedly having some broader economic effect with fewer hunters afield. Politics will diminish the authority of a citizen Commission to respond to hunters.

You will hear from some who claim an equity issue - trails should be open to everyone. Well, everyone out there is not hunting so why would everyone be treated the same? They also will argue there are other wildlife management tools available other than regulating off-road vehicle travel as an aid to hunting. As I just described - they have a point but those tools are not the ones that hunters desire. Again, who should be calling the shots for hunters?

Are there some hunters who would rather use their motorized vehicle for hunting - sure there are. A few of folks also want to use OHVs as an aid to hunting with absolutely no controls or restrictions. As a matter of policy, the Commission has ensured there are units where motorized vehicles are not an aid to hunting within the prescription of whatever land manager travel rule is in place because the MVR only applies to 31% of hunting units. If my colleague Randy Budge from the Southeast Region were here, he would tell you about the success of the Diamond Creek hunt unit (unit 76), one of the most recent additions to the MVR and understandably, one with a few motorized hunters very opposed to the rule. However, as a matter of majority, we have had very positive response from Diamond Creek zone hunters to the point where, as we discuss this year's hunting regulations, it is not a major issue.

I will agree that the MVR, like any rule, should be improved and clarified. All motorized users deserve to understand who is and who is not affected and how and where they are affected. Forest Service travel planning in particular has matured significantly since 2002 and it is appropriate to re-assess with hunters but also recreation partners whether in light of federal travel rules, if there should be additional modification to the MVR similar to the two units we just removed. Furthermore, it is apparent that there continues to be significant confusion about the role of the MVR and the role of federal and state travel plans relative to management of wildlife habitat.

To that effect, at our conference call meeting on March 10, the Commission approved a motion to establish a broad-based task force, which included hunters and motorized recreationists, federal and state land managers, and Idaho Department of Parks and Recreation to:

1. Review and make recommendations concerning the Department's existing MVR; and
2. Review and make recommendations concerning the current Memorandum of Understanding the Department has currently with the USFS to specify how the Department is involved in the enforcement of the federal agencies travel plans on federal lands.

Results and recommendations of the task force would determine the necessary public process for any decision-making such as conducting separate hearings or addressing issues as agenda items at Commission meetings to enable hunters and other interested publics to be fully engaged. The Commission is committed to this and does not expect the process to be quick or uncomplicated.

Mr. Chairman and members of the Committee - in the course of considering these bills both today and at the joint hearing on February 7, you and the Commission will have heard quite a bit from hunters and from motorized recreationists. I believe the proposed task force will provide for the necessary detailed discussion to frame multiple issues and provide rational recommendations that ultimately, may lead back to the legislature in the form of either modified rules or even new statutory proposals. I believe this would be a more reasonable approach for all interests than the bills before you today. That concludes my testimony on S 1015 and S 1016..

TESTIMONY:

Inserted into the minutes is testimony on **S 1159** by **Commissioner McDermott**.

Mr. Chairman and members of the Committee: The Commission has not yet taken a position on Senate Bill 1159, as we were not able to review the bill at our last meeting on the morning of March 10. However, subsequently, the bill has emerged and Jim Unsworth will provide technical testimony about its consequences.

I will just offer that state law in Idaho Code 36-104(b)(10) gives the Commission authority to enter into cooperative agreements with landowners to enforce their own motor-propelled vehicle restrictions **when the restrictions protect wildlife or wildlife habitat** (emphasis added). Our policy nexus for entering into such cooperative agreement such as our current MOU with the Forest Service is enforcing this section of Idaho Code specifically to protect wildlife or wildlife habitat. Furthermore the Commission is given authority to administer the restrictions and cooperative agreements addressed in this subsection. Also consistent with this law, the Commission does not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho so this law is not applied to rangelands. I have attached this section of Idaho Code as part of my testimony.

Unlike the Department MVR, which only affects hunters, our enforcement of Idaho Code 36-104, when consistent with USFS motor vehicle travel restriction, does affect all motorized users. Our enforcement does address protecting wildlife from disturbance and protecting wildlife habitat from damage such as from illegal trail "pioneering", which has been a serious problem for the USFS.

The Commission obviously believes that such cooperative work and enforcement of state law is important for wildlife. Yet, clearly this bill indicates that some motorized recreationists do not believe this is a worthy endeavor or may misunderstand the specific context under which our Conservation Officers can act. This reinforces element #2 of the Commission motion for a broad-based task force from my previous testimony, which would review and make recommendations concerning the current Memorandum of Understanding the Department has currently with the USFS to specify how the Department is involved in the enforcement of the federal agencies travel plans on federal lands.

As I noted previously, I believe the proposed task force will provide for the necessary detailed discussion to frame issues and provide rational recommendations that ultimately, may lead back to the legislature in the form of either modified rules or even new statutory proposals. I believe this proposal merits your consideration in lieu of Senate Bill 1159 at this time. That concludes my testimony.

Next to testify was **Mr. Jim Unsworth**, Deputy Director, with the **Department of Fish and Game**. His testimony regarding S 1015 and S 1016 has been inserted into the minutes.

TESTIMONY:

Chairman Pearce and Committee:

Thank-you for the opportunity to provide technical information about these bills. You have a written copy of my testimony. Senate Bills 1015 and 1016 would prohibit the Commission from regulating motorized vehicles as an aid to hunting on lands that are not owned or leased by Idaho Department of Fish and Game. The legislation makes extensive change to the authorities of the Commission in Idaho Code (I.C.) 36-104 and change to unlawful taking of wildlife in I.C. 36-1101. The provisions in these bills would overturn the existing Commission adopted Motorized Vehicle Rule for Hunters (MVR) that has been in place since 2002. Also, our interpretation is that the addition of subsection (c) to 36-1101 in Senate Bill 1015 [page 3, lines 43-45] would also undo current restriction on the use of helicopters for the purpose of transporting hunters, gear, or game when such use is not at established airfields (section 4 of Idaho Code 36-1101).

The Department has provided substantial technical information about the Motorized Vehicle Rule for Hunters (MVR) at previous hearings. I will briefly recap the rule and describe the rationale and likely consequences if the rule is overturned.

I have provided the rule brochure with my testimony and it provides a good map of the units designated for big game or upland game. You can see that only about 30% of our hunting units are included in this rule. There is a broad diversity of landscape for both motorized and non-motorized big game and upland bird hunting.

Our motorized vehicle rule works within land manager travel rules - Motorized use of any kind is first and foremost governed by whatever travel plan the public land manager, private property owners, or local government has instituted. The USFS has deployed specific travel plans on several forests that restrict off-trail motorized travel that may also include various seasonal road/trail closures. Some of the restrictions are to protect wildlife habitat and reduce wildlife disturbance. The BLM still allows substantial off-trail travel on much of their lands because they have not engaged in travel planning to a large degree. The Commission MVR is specific to hunting season. The MVR rule does not interfere with travel plans of the land manager; I believe you have information at least from the BLM to that effect.

Briefly about the rule:

The rule only applies to hunters of big game and upland game where designated. The rule treats motorized vehicles as an aid to hunting, that is, using a motorized vehicle to get to a hunting location on a road or trail that can't be used by a full-size vehicle.

The rule does not apply to motorized recreationists who are not hunting — this recreation is governed by whatever travel plan is in place.

The rule does not prohibit carrying a weapon. Carrying a weapon is not equivalent to hunting.

The Commission does not have authority to regulate game retrieval as this is not a method of take. Thus, the MVR does not restrict retrieval of downed game - that is up to the land manager. The Commission does not have authority to regulate the transportation of camping equipment — that too is up to the land manager as long as hunting activity does not occur while transporting camping equipment.

There is exception in the MVR for holders of a valid disabled person motor vehicle permit in accordance with the rules of the land manager.

What is the rationale of this approach? The use of off-road vehicles (OHVs) has substantially increased ease and decreased time to get to remote wildlife habitat, areas important for providing wildlife security and escape cover during hunting season. The increased access is good for increased harvest opportunity but can result in reduced hunting opportunity and quality hunting for mule deer bucks or bull elk. As Commissioner McDermott testified, hunters consistently tell us that their high priority is general season hunting opportunity. They also tell us that quality hunting is desirable. The MVR is a tool to help maintain balance between general hunting opportunity and providing access to quality big game. The use of motorized vehicles restrictions to reduce elk vulnerability to harvest is grounded in science. The MVR also helps provide diversified hunting opportunity by providing known areas for non-motorized experience.

The consequences of not having the MVR as a wildlife and hunting management tool will likely result in less opportunity, fewer bucks and bulls, and more hunter conflicts. Foremost, the ability to meet hunter expectations for general hunting seasons with reasonable numbers of bucks and bulls would be reduced. General seasons would likely be converted to controlled hunts resulting in a loss of hunting opportunity. Family hunting opportunity would be diminished and there would be fewer hunters afield. Conflicts between hunters who use OHVs and those who do not would likely increase.

Our Fish and Game Advisory Committee of landowners and sportsmen has expressed their support for regulation of OHV use as a wildlife conservation tool. I have attached motions from their February 18 meeting to my testimony.

Some may argue we are "over-enforcing" the rule. The recent two-year average of warnings and citations written for MVR violation is 18, a very small proportion of our annual 7,500 warning and citations. These are generally encountered in the course of normal enforcement patrol but we do target areas when we get complaints from hunters or landowners about problem areas.

I will point out that the Commission rule process provides for flexible and continual reassessment of units to make sure the MVR is meeting objectives. In some cases, new USFS travel plans do provide sufficient outcomes to meet both our wildlife harvest management objectives and hunter management objectives. In that case, we can remove units from the MVR, just as we did in 2010, a rule recently approved by the Legislature.

The Department and hunters lose an important management tool if you pass Senate Bills 1015 and 1016. That concludes my testimony.

TESTIMONY:

Following is **Mr. Unsworth's** testimony in regards to S 1159.

Chairman Pearce and Committee: Thank-you for the opportunity to provide technical information about this bill. You have a written copy of my testimony.

Commissioner McDermott has already described Commission authority in Idaho Code 36-104(b)(10). Senate Bill 1159 would create a new limitation on Commission authority by amending 36-104(b)(15) by adding new subsection c.2. This limitation prohibits enforcement or entering into any agreement with any federal agency associated with enforcement of federal laws or regulations relating to road closures or other road-related federal laws or regulations.

Federal agencies generally enact motor vehicle restrictions via a public travel planning process. The travel plans address designations of allowable uses by vehicle type, seasons of use, and routes. Also, the USFS defines road and trails separately so there are designated closures and routes for both. Thus, the focus of only "roads" in Senate Bill 1159 leaves the Department uncertain about specific intent of the bill whether the authority limitation is specific to roads or if really, the intent is more broadly for all motor vehicle restrictions. If the intent is to restrict enforcement of federal motor vehicle restrictions, we suggest the bill say so. Another observation is that clarity would be improved by modifying subsection 10, rather than subsection 15 so that the cooperative agreement language is consolidated.

As pointed out by Commissioner McDermott, the Department is enforcing Idaho Code 36-104 when there are landowner-enacted motor vehicle restrictions that protect wildlife or wildlife habitat. The Department is not writing citations for a federal law or regulation, we are writing citations for violations of state law and there must be a wildlife nexus. Also, our ability to enter into such cooperative agreement is specifically limited to lands that are either within or adjacent to national forests in Idaho; rangelands are excluded. There is benefit to a cooperative approach and allowing Fish and Game to enforce federal land manager motor vehicle restrictions by using Idaho law when the restrictions protect wildlife or wildlife habitat. It reduces illegal activity when folks violate motor vehicle restrictions (only violators really don't want boots on the ground) such as illegal disturbance to wildlife during critical periods such as calving and illegal habitat damage and stream degradation, including illegal trail pioneering.

Our conservation officers are a primary enforcement presence on federal national forest service lands conducting their wildlife patrols. Our cooperative enforcement is an important tool for helping motor vehicle restrictions meet objectives when enacted for wildlife and habitat protection. Some may argue we "over-enforce" to get revenue. The facts show otherwise. The recent two-year average of warnings and citations written because of violation of Forest Service road or area closures is 86, a small proportion of our annual 7,500 warnings and citations. We estimate that annually, we accrue about \$5,000 to our fine and forfeiture fund from penalties. We obviously are not in it for the money.

Frankly, reduced enforcement presence is likely to lead to ever more conservative travel restriction management by federal land managers. I don't think that is a desired outcome by hunters or by other motorized recreationists.

That concludes my testimony.

TESTIMONY:

Mr. Andy Brunelle, Capitol City Coordinator, U.S. Forest Service, was the next person to provide testimony. He submitted a written statement which is inserted into the minutes.

On behalf of the National Forests in the state of Idaho this statement is offered on Senate Bills 1015, 1016 and 1159. In 2010 we renewed a Memorandum of Understanding with the Idaho Department of Fish and Game where we recognize that IDFG was created under the laws of the State of Idaho to preserve, protect, perpetuate, and manage the fish and wildlife populations of the State, and the Forest Service is authorized by Acts of Congress and regulations of the United States Department of Agriculture to administer the multiple use management of National Forest System lands in the State of Idaho, including fish and wildlife habitats. The Forest Service recognizes the legal authorities of state government on National Forests. For example, state traffic laws apply on National Forest System roads as provided for in 36 CFR 212.5(a)(1), including motor vehicle registration and driver licensing, providing a consistent framework for users within State boundaries. Likewise the IDFG is the agency with the authority to regulate hunting and fishing activities through issuance of licenses, tags and other permits, the setting of seasons, and methods of take. And section 39-1101, Idaho Code, sets limits and prohibitions on use of helicopters as an aid to hunting.

Federal statutes and regulations govern motor vehicle use on the National Forests. Use of motor and mechanical vehicles is not allowed in Congressionally-designated Wilderness. Motor vehicle travel regulations were most recently updated in 2005. The 2005 rule provide for a system of roads, trails, and areas on National Forest System lands designated for motor vehicle use. The legal document is a Motor Vehicle Use Map and it is a product of the numerous public meetings and environmental assessments. These designations include class of vehicle and in some cases the time of year a road or trail may be open. But the travel plan map does not discern among activities using motor vehicles.

We consider the regulation of hunting and fishing, under the purview of IDFG, includes its rules for some big game units where they regulate the use of motorized vehicles by hunters as an aid to hunting. That rule is for the purpose of achieving big game management objectives. Some public testimony at the February 7 joint hearing expressed concerns that the IDFG rule "trumps" a National Forest travel plan. We do not see it as an intrusion because the IDFG rules apply only to hunters when using motor vehicles as an aid to hunting big game. It occurs for a limited time of the year, applies in some, not all big game units, affecting National Forests only in southern Idaho. Individuals not hunting are free to use the National Forest roads and trails in compliance with the Motor Vehicle Use Map.

The IDFG hunting rule also provides the opportunity for the Forest Service to keep open more miles of motorized trails for general recreation than may have been available in absence of the IDFG Motor Vehicle Rule. For example, one District Ranger says during the travel planning process he faced the dilemma of closing trails to address big game vulnerability/security and hunter experience. Seasonal closures are hard to communicate. The timing is bad in his area because hunting starts September 1, just when the fall colors hit and many people go riding for pleasure. The state's motor vehicle rule on big game hunting at least allows for trying to achieve the big game objectives while allowing for motor travel for non-hunters.

We recognize the map and the motor vehicle rule make things a little more complicated. We have worked with IDFG and state Parks to promote information about the maps including supporting the production of a video that explains how to use the travel plan maps in combination with the hunting regulations.

We would also like to provide some comments on Senate Bill 1159, as we see this legislation has greater potential to affect National Forest resources and established working relationships with Idaho Fish and Game. Our comments are technical in nature. The Forest Service has not had a great amount of time to review this legislation since it was not posted to the Idaho Legislature website until Friday March 11.

The Memorandum of Understanding renewed last year is the mechanism for the agencies to comply with 36-104(b) 10 for the purpose of IDFG enforcing USFS motor vehicle restrictions. The enforcement must be for instances where wildlife protection or wildlife habitat protection is at issue for IDFG to take enforcement action.

We work with IDFG in all parts of Idaho and we value the relationship of working with them in the field to achieve mutual goals. The greater number of conservation officers than Forest Service law enforcement officers this provides more boots on the ground. For many years we have done joint patrols with F&G during hunting season. These patrols have not only assisted us with compliance with travel plan enforcement, but resulted in enforcement of F&G regulations.

In north Idaho we have road restrictions in place to protect grizzly bears in the Selkirks and the Cabinets. Grizzly bears are protected under the Endangered Species Act and land management is heavily influenced by the US Fish and Wildlife Service and the courts. IDFG has provided direct enforcement support through a shared Conservation Officer. The CO position is partially funded with Federal funds. Loss of this position would reduce enforcement capacity which could lead to increased motorized violations in grizzly bear habitat and additional stipulations from USFWS or sanctions by the court to further restrict motorized uses.

Land management projects, including timber sales, often require a set of mitigation actions. Actions such as seasonal road closures are a necessary component to being able to gain approval for the logging project. IDFG's role in the road restrictions are an important element in their effectiveness, without which the mitigation could be questioned, which in turn could affect whether logging can occur. It is this type of situation that was contemplated by 36-104(b) 10 ' when the Idaho Legislature passed it twenty-five years ago and still relevant today.

We have identified some specific questions. First, line 40 and 41 makes reference to not enforcing road closures on Federal lands, and also the phrase "or any other enforcement of federal laws or regulations relating to roads on federal land." Many of the wildlife and resource damage issues do not relate to road closures per se, but rather the operation of vehicles not on a designated road or trail. We are curious if the intent is to disengage from enforcement only related to roads, yet preserve the ability to act when people are driving cross country, that is, off of a designated road or trail. A public opinion survey in 2010 by the Idaho Forest Products Commission and the Forest Service indicated 80 percent support for the notion that motorized vehicles should stay on the trail. Ten percent opposed staying on the trail and the other ten percent think there should be no motorized vehicles on public lands.

Second, the limitation only mentions roads and road closures on Federal lands, but does not mention trails. The National Forests in Idaho contain 7,900 miles of trails open to motor vehicles in addition to the 19,000 miles of road. Since trails are not mentioned, and 36-I04(b) 10 is not proposed for repeal, it appears some clarification may be needed.

I want to close by taking note that our approach to enforcement of travel management includes a significant component of education. In fact, it is common that when we implement a new travel plan we use the first year or two to emphasize providing information to forest visitors not writing tickets. Most people will comply with the rules if they know the rules. This includes getting the motor vehicle use map in their hands. Without the assistance from the IDFG we will lose some ability to insure compliance with the travel restriction and ultimately habitat and the quality of the hunting experience will decline.

Thank you for the opportunity to comment on the legislation.

TESTIMONY:

Mr. Terry Heslin, representing the **Bureau of Land Management (BLM)** testified and also provided a statement from the office of BLM, which is inserted into the minutes.

The BLM is authorized by acts of Congress and regulations of the United States Department of Interior to administer the multiple use management of the BLM public lands in the State of Idaho.

The BLM recognizes state government legal authorities on BLM public lands, including the Department of Fish and Game as the agency with the authority to regulate hunting and fishing activities through issuance of licenses, tags and other permits, the setting of seasons, and methods of take. The Department of Fish and Game administers hunting units where regulations address motorized vehicles as an aid to hunting.

Motor vehicle travel on the BLM public lands is governed by Federal statutes as determined by travel plans at the Field Office level.

The Department's rules do not interfere with BLM's travel planning process as they address the activity of hunting, methods of take and game retrieval. BLM travel plans address designations of allowable uses by vehicle type, seasons of use, routes, etc., but not the activity of hunting.

In the last decade, BLM Idaho has made significant progress toward completing travel plans, yet in many areas, especially in the southern part of the state we are several years away from completing those plans. We look forward to a long and prosperous relationship with the State of Idaho and the Department of Fish and Game.

TESTIMONY: **Mr. Neill Goodfellow**, Fruitland, representing himself, was next to testify. He stated that he had two questions to ask. Why let Fish and Game regulate his right to access and is a horse an "aid to hunting"? Mr. Goodfellow feels the road closures by the USFS are a huge issue, and IDFG should not be enforcing federal laws or regulations. He also said that the less the federal government is involved, the better off we are as a state, even if it means giving up some federal funds.

TESTIMONY: **Mr. Tony Varilone**, is representing **Caribou County Trail Riders and Over the Hill Gang ATV Club of Bear Lake County**. He said they are in support of S 1015 and S 1016.

He stated that these bills clarify the role of the IDFG in managing ATV use during hunting seasons on non F&G lands. Also, IDFG has no statutory authority to regulate travel methods or road/trail closures, except on lands they administer under the State of Idaho. The landowner, or the legal public lands administrative agency, are fully responsible for travel management regulation respective to their codified rights.

Mr. Varilone said that he is opposed to: a) motorized vehicle travel off designated roads/trails where it is not allowed by the landowner/administrator; b) shooting game while in, or on, a motorized vehicle.

He feels that non motorized travel in Idaho is already severely restricted and will get worse with numerous proposals by the USFS, BLM, and the preservation groups.

A copy of Mr. Varilone's entire testimony, along with statistics of acreage data, is on file.

TESTIMONY: **Mr. Jon Koopman**, Fruitland, said he wanted to speak to S 1159 first. As a matter of principle, he opposes a state agency being used by federal authority to enforce federal laws or statutes. Regarding S 1015 and S 1016, he is not opposed to restrictions on off-highway vehicles as it relates to hunting from inside a motorized vehicle or hunting from the top of one. He opposes the use of them to chase or harass game. He said that he is strongly opposed to the ongoing systematic elimination of established roads and trails that heretofore were open for motorized traffic and now is no longer open to motorized traffic.

Mr. Koopman said that rules and regulations that are enforced for one type of motor vehicle should be enforced for all types of motor vehicles. He also asked the Committee to bear in mind the impact of these types of regulations and statutes will have upon those in the outdoor community who will no longer be able to travel in the manner that they once did.

TESTIMONY: **Mr. Alan Wyler**, President of **Caribou Trail Riders**, (80+ members) Caribou County, Soda Springs, spoke next. He said that he has a special interest in ATV/OHV rulings because of his grandson who was born without a fibula in either leg. At the age of 16 months, his deformed feet were amputated so that he could be fitted with prosthetics. Mr. Wyler asked, "When he turns 12, what is going to happen to his hunting heritage if the Fish and Game is allowed to keep making travel rules and take away yet more ATV/OHV trails and roads?"

He stated that Fish and Game said their survey showed that 80% of people they talked to favored their rule. Mr. Wyler said that his survey from September through November last year was completely opposite. The rule to not carry a gun was not accepted and the maps are not that good either. He feels the Fish and Game constantly blame ATV use for a lot of the problems, but they never accept blame for mismanagement, selling too many tags, permits, and whatever. Mr. Wyler said that he fully supports S 1015 and S 1016.

TESTIMONY:

Inserted into the minutes is the testimony of **Herb Pollard**, who is opposed to the bills.

My name is Herb Pollard. I hold an Idaho Lifetime hunting license and have been hunting deer and elk for 56 seasons. I represent myself and my grandchildren who are the sixth generation of hunters. In the interest of full disclosure, I graduated from the University of Idaho with a MS in Fisheries Science and worked 28 years for IDFG before retiring 14 years ago this month. I have not retired and do not intend to retire from hunting. Some of my earliest memories are hunting with my father and older brother. Long before I could carry a rifle I learned that the important elements of hunting are to sit still, move quietly, watch in every direction, don't talk, and don't spook the game. Good hunters respect the game, respect the land, respect the rights of other hunters, and honor the tradition of fair chase. In recent years we have been beset with folks who apparently measure their outdoor recreation in decibels, miles, and dust.

- The number of ATVs in the state has increased 20 times in the past 20 years - doubled in the last 7 and there are now 140,000 off road vehicles registered in the state. The actual number in use, counting unregistered and non-resident vehicles is probably closer to 200,000.

- A hunter on foot may cover 8 miles in a day, and disturb wildlife within 100 to 200 yards of his path. A hunter on an ATV will travel 20 miles and chase deer and elk 4-500 yards to either side of his path. One man on an ATV needs as much space to hunt as 10 men on foot.

- The usual person who uses an ATV to hunt also is equipped with the latest in GPS, radio and telephone communications and firearms. The race for ever greater mobility, technology, and firepower reflects an attitude of; "Get out there first with the most." Meanwhile the poor old deer or elk is out there with the same level of technology and mobility that they brought out of the last ice age.

- The increase in mobility and firepower has resulted in shorter seasons and more controlled hunts. Fifteen years ago, an Idaho hunter could hunt statewide, starting with archery in September, general season in October, more archery or backcountry in November and muzzleloaders in December. Now we must pick a unit and a season and usually have less than two weeks and must hunt in a single area.

- Conflicts between hunters, displacement of wildlife, overharvest and habitat, damage resulting from use of ATVs for hunting has been recognized as a problem from Maine to California and Minnesota to Florida. All of the western states have regulations similar to - but often more restrictive - than the regulations promulgated by the Idaho Fish and Game Commission.

- The proliferation of ATVs and the resultant conflicts are a relatively new and growing problem. I do not believe it would be wise or prudent to relax regulations when greater regulation is called for.

- You will hear that the ATV riders have "lost" access and opportunity. The reality is that they have lost nothing. They have taken the quality hunting experience and opportunity for enjoyment of the woods from other hunters. They have overrun and overcrowded any area they are not prohibited. I hope that this committee will seek some balance and protect the interests of those of us who prefer the traditions of fair chase and outdoor skills.

TESTIMONY: **Mr. Douglas Schleis** said that he is opposed to all three bills, S 1016, 1016, and 1159. He said that with due respect to Senator Corder, there are 66 units in the state with no vehicle restrictions at all. In southern Idaho, there are 33 units that have some form of restriction. Regarding the restrictions, Mr. Schleis said that you could have ATV parades down those roads as long as you are not actively hunting. Most conservation officers are going to look at how you are riding, what you are carrying, and how you are acting. He also said for the people who choose to walk to get to where the deer and elk should be, where the best opportunity is, and the best experience is, – then have their opportunities and experience destroyed every year by ATV operators. He quit hunting in 1998 because of the problems with ATVs. He asked for a "no" vote on the bills.

TESTIMONY: **Mr. Robert Burkhardt** said that he is an Idaho native and that hunting and fishing is very important to him and that he also belongs to the Boise ATV Trail Riders. Some of the trails that he has ridden on have been closed off. He supports both S 1016 and S 1016.

TESTIMONY: **Mr. David Claiborne** said that he is here on behalf of the Idaho State ATV Association. They have been instrumental in bringing forth these bills, with the help of Senator Corder. He said what they are asking for is a fundamental policy issue be addressed and that is – "Should the Department of Fish and Game be in the business of regulating travel?" Mr. Claiborne said their job is to regulate wildlife and the job of land managers is to regulate how people travel on their land. The purpose of the bills, S 1015 and S 1016, are to keep open trails open. He stated that he is talking about trails that the Forest Service said are open and the Fish and Game says that they can't be used.

Mr. Claiborne said the club would like for the Committee to pass S 1015 and 1016 and ask Fish and Game to enforce their existing rules. He emphasized that Fish and Game enforce their rule that you can't shoot from your ATV; enforce their rule that you can't travel cross-country; and enforce the rule that you can't harass wildlife with ATVs. He said their members support all those efforts.

With respect to the suggestion of a task force, the Idaho State ATV Association is opposed to it. A year ago, they met with the Director of IDFG to discuss this very issue and was told they would work with them; however, nothing was done. Mr. Claiborne feels the IDFG has been inconsistent and they couldn't get any cooperation from the Director's office. That is why these bills were brought to the Committee. He presented a packet with over 1,000 signatures petitioning the passage of these bills.

TESTIMONY: Next to testify was **Mr. Mark Sauerwald**. He is Chairman of the ISATVA Hunter OHV Access Committee. A copy of his testimony is inserted into the minutes.

Mr. Chairman, SB 1015 & 1016 will correct a wrong that has been allowed to go on for far too long. That wrong is Fish and Game's authority to regulate travel by motorized vehicles on Federal property. As you know, Fish and Game's role is to manage wildlife and in doing so may place restrictions on any aid to hunting. The only way Fish and Game could legally restrict motor vehicle traffic was to define a motor vehicle as an "Aid-to-Hunting".

An "Aid-to-Hunting" is a weapon and its attachments used to reduce the animal to harvest, game calls, scents or baits to attract the animal so it may be reduced to harvest, lighting to illuminate an animal so it may be reduced to harvest, etc. A motorized vehicle (specific a motorcycle or ATV) is in no way used as a weapon, an attractant, etc. A motorized vehicle is simply used as a mode of transportation from point A to point B. SB 1015 and 1016 only allow motorized travel by hunters on trails on federal property that are already open to such travel. We are NOT asking to be allowed to hunt "FROM" an ATV and we are NOT asking to be allowed to travel cross country. SB 1015 and 1016 will not allow either. Fish and Game has testified that they are regulating motorized travel much like they do for aircraft. This is misleading. Fish and Game's restriction on aircraft are that one may not hunt "FROM" an aircraft. Hunting from a motorized vehicle is already illegal and not disputed. Fish and Game does not restrict the airspace above a hunting area nor airstrips within a hunting area.

Other misconceptions and misleading comments are that:

(1) If passed, motorcycles/ATVs will be allowed to ride anywhere and everywhere in the back country. This is NOT true. They will only be allowed on open USFS/BLM trails. Cross country travel is still illegal.

(2) Fish and Game has testified that they will have to take "other measures" such as draw hunts, etc., to ensure quality hunts if these bills are passed because ATVs access will greatly reduce the herds. There is not a single documented study or shred of evidence that this is the case. In fact, Fish and Game's own web-site says their (Fish and Game) studies have shown hunters that use ATVs for access are less successful than those on foot.

(3) There has been much discussion about ATVs disrupting other hunters. This may have been the case years ago when cross-county travel was allowed, but all motorized vehicles must stay on trails now.

**There are always those that will break the law that is an enforcement issue. In closing, I would just like to say; If SB 1015 and 1016 do not pass, Fish and Game will retain the authority to regulate travel which they should have never been allowed and they will have the authority to expand on existing law. Fish and Game can regulate any travel such as that of your truck, or horse because under the current law they can define them as an "Aid-to-Hunting".

TESTIMONY: **Mr. Jon Skinner**, representing himself, stated that he is a third generation Idahoan, a farmer and recreationist, testified in opposition to all three bills. He said that he lives near two of the most abused units by ATVs in the state of Idaho, units 32 and 38. He feels that the Fish and Game Department has the right to regulate where one rides. He said that he would like to see more cooperative effort between the federal government and the Department of Fish and Game in regards to enforcement.

TESTIMONY: **Mr. Bill London, Eagle**, is representing the **Idaho Conservation Officers Association** and they oppose the bills. He said that he is here on his own time, is not working for the Fish and Game at this time, and the Association is separate from Fish and Game.

He said that S 1015 and S 1016 has had a lot of discussion and obviously there is a lot of confusion. He feels a Task Force, in the interim, would be helpful so that people could work together and that would be the best way to address a lot of those issues.

The Association issued a statement regarding their opposition to S 1159 and it is inserted into the minutes.

The Idaho Conservation Officer's Association strongly opposes SB 1159. In situations where state and federal agencies have the shared goals of resource management and protection, it is only reasonable to cooperate with each other on the ground. Particularly in a state that has a vast holding of federal lands.

This bill prevents the Idaho Fish and Game from having that kind of cooperation on federal lands, primarily the US Forest Service. Neither agency has enough field personnel to address the growing public use of federal lands. Together, we can be more effective.

Enforcement and education partnerships with the US Forest Service and IDFG have been highly successful in gaining compliance for both US Forest Service Travel Plans and game laws.

This bill will:

- 1.) Dramatically increase conflicts between hunters who are hiking up those closed roads and those who are illegally driving vehicles behind locked, signed US Forest Service gates on closed roads.
- 2.) Lead to increased game harvest due to increased vulnerability.
- 3.) Lead to big game seasons being converted from general hunts (open to all) to controlled hunts (limited draw).
- 4.) Will reduce income to local communities; hotels, gas stations, restaurants etc., due to fewer people hunting for fewer days each year.
- 5.) Increase Grizzly Bear vulnerability, which could lead to more federal land, private timberland, and state land being locked up to protect Grizzly Bears.

This bill impedes the ability of Conservation Officers to fulfill their duties for all Idahoans.

TESTIMONY:

The testimony of **Mr. Charles Hoovestol** supporting S 1015 and S 1016 is inserted into the minutes

Mr. Chairman, fellow Committee Members, thank you for taking my comments. I know time is a factor today, so I will be brief. My name is Chuck Hoovestol and I am a licensed hunter and resident of Boise, Idaho. I am speaking today in support of Senate Bills 1015 and 1016.

I believe if you allow Fish and Game to define ATV's and motorcycles as "hunting tools", you also allow Fish and Game to regulate ALL forms of travel as a "hunting tool". Conceivably, there could come a day when Fish and Game would have the authority to regulate the truck you drive, your whitewater raft, your snow machine, even the horse you ride.

I cannot imagine a day this committee would consider legislation that would allow Fish and Game to regulate where you can and cannot access public land on a horse. Why then, would you allow legislation that regulates where I can and cannot access public land on my bike? It is simply a method of travel.

I am all for enforcing the rules that are already on the books. I support all laws that make it illegal to shoot from or hunt off an ATV, dirtbike, or any other vehicle. I do not support a rule that restricts my access to public land. Travel on public land should be regulated by the Forest Service and the BLM. In other words, Land Management Agencies. As a matter of fact, I would challenge the Constitutionality of any rule or law that restricts my access to public land.

As a resident of the State of Idaho, I choose my elected officials, (indeed, I voted for many of you) based in large part on your stand on small government. Less government. The legislation before you would repeal far-ranging and abusive powers that have been granted to a government agency. A government agency that should not have the authority to operate this far out of their scope. Fish and Game's jurisdiction should be limited to managing fish and wildlife and enforcing the laws that already address this issue.

Mr. Chairman, fellow Committee Members, please do what your constituents elected you to do. Keep government small and keep opportunity large. Eliminate the motorized vehicle hunting rule. Thank you.

TESTIMONY: **Mr. Brad Smith, Conservation Associate** with the **Idaho Conservation League**, spoke next.

He stated that he has spoken with Senator Corder about these bills and said that he has brought up some valid questions; however, Mr. Smith said that he had to respectfully disagree because there is a disconnect between the Forest Service and land use (designating the roads and trails) and the Fish and Game who regulates the hunting space and how hunting takes place. He said that somehow, there is a need to connect the dots, and to think more about these bills before they are passed. Mr. Smith stated that the current rules apply to one-third of the hunting use that is in the state.

With regards to S 1159, he said that ICL is concerned about the significance of what this bill might do.

TESTIMONY: **Ms. Adena Cook** was next to testify. She represents the **Blue Ribbon Coalition** and she strongly supports the passage of S 1015 and S 1016. Ms. Cook said that a lot of her testimony has already been well-covered by Mr. Hoovestol, Mr. Claiborne, and Mr. Sauerwald. She feels that a large part of the problem is that hunters don't know where to go to get the experience that they want to have. Good information and travel plans need to be out there for the hunters and that would solve a large part of the problems.

TESTIMONY: **Mr. Haden Claiborne, President of the Boise ATV Trail Riders**, testified in support of S 1015 and S 1016. He was told that he would be ticketed if he rode his ATV up an open trail during hunting season. Because of that, he didn't go hunting in Idaho (he usually spends about \$1,500) and instead, went to Moab, Utah and rode his ATV. He stated that he would like to work with the system and their ATV club promotes responsibility among their members. Mr. Claiborne feels that if things don't change, people in Idaho will go to another state to spend their dollars.

TESTIMONY: An e-mail was received from **Charlie Woodruff** requesting that the Committee vote no on Senate Bill 1159.

CLOSING REMARKS: **Senator Corder** closed the discussion by saying that it is easy to be confused about some of the issues and it should be up to the Legislature to make the decisions regarding these matters.

MOTION: **Senator Tippets** made the **motion** to send S 1015 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Heider**.

SUBSTITUTE MOTION: **Senator Brackett** made a **substitute motion** to **hold** S 1015 and ask the Resources Interim Committee to find some middle ground. **Senator Stennett seconded** the motion.

ROLL CALL VOTE: A roll call vote was requested on the **substitute motion to hold S 1015**. Voting aye were Senators Werk, Stennett, Brackett, Siddoway, and Vice Chairman Bair. Voting nay were Senators Tippets, Heider, Cameron, and Chairman Pearce. The vote was **5-4 in favor** of the substitute motion.

MOTION: **Senator Siddoway** made a **motion** to **hold** S 1016 and ask the Resources Interim Committee to find some middle ground. **Senator Brackett seconded** the motion.

ROLL CALL VOTE: A roll call vote was requested on the **motion to hold S 1016**. Voting aye were Senators Werk, Stennett, Brackett, Siddoway, and Vice Chairman Bair. Voting nay were Senators Tippets, Heider, Cameron, and Chairman Pearce. The vote was **5-4 in favor** of the motion.

MOTION: **Senator Werk** made a **motion** to **hold** S 1159 and ask the Resources Interim Committee to find some middle ground. **Senator Stennett seconded** the motion.

ROLL CALL VOTE: A roll call vote was requested on the **motion to hold S 1159**. Voting aye were Senators Werk, Stennett, Tippets, Brackett, Siddoway, and Vice Chairman Bair. Voting nay were Senators Heider, Cameron, and Chairman Pearce. The vote was **6-3 in favor** of the motion.

ADJOURN: **Chairman Pearce** thanked the Committee for their work, then adjourned the meeting at 3:45 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 16, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-------------------------------|---------------------------------------|------------------------|
| <u>H 136</u> | Watermasters | Tim Luke, IDWR |
| <u>H 137a</u> | Alteration, channel of streams | Norm Semanko, IWUA |
| <u>H 138</u> | Irrigation, buried conduit | Norm Semanko, IWUA |
| <u>HCR 16</u> | Environ quality dept., rules rejected | Rep. Hartgen |
| <u>H 22</u> | Water right licenses | Shelly Keen, IDWR |
| <u>H 24</u> | Water, notice | Shelly Keen, IDWR |
| <u>H 25</u> | Water/permits to appropriate | Shelly Keen, IDWR |
| <u>H 31</u> | Water, permit application fees | Gary Spackman, IDWR |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 16, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M.

MOTION: **Vice Chairman Bair** made a **motion** for the approval of the minutes of March 7, 2011. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

H 136: **Mr. Tim Luke, Idaho Department of Water Resources (IDWR)** presented H 136. He said the purpose of this legislation is to clarify language and to streamline sections and processes pertaining to water district watermasters and treasurers.

Section 42-605, Section 1 subsection 10, is amended to read that a duly appointed watermaster that is reelected in consecutive years shall not be required to take and file additional oaths with the Department of Water Resources for each consecutive year the water master is reelected. Section 2, relates to the terms of service for the watermaster. Section 3 changes the number of days (from 30 to 14) prior to the annual meeting of the water users of the water district for the watermaster to prepare a proposed budget for the succeeding year and submit to the water users for consideration and approval at the next annual water meeting. Section 4 applies to the treasurer. A duly appointed treasurer that is reelected in consecutive years shall not be required to take and file additional oaths with the Department of Water Resources for each consecutive year the treasurer is reelected.

MOTION: **Senator Tippetts** made a **motion** to send H 136 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote. **Senator Tippetts** will be the **sponsor**.

H 137a: Presenting H 137a was **Mr. Norm Semanko, Director, Idaho Water Users Association (IWUA)**. He said it was presented to them by their legislative committee. The concern is in regards to the reach of some of the county permitting programs and how they fail to coexist with the Idaho Stream Channel Alteration Act. When the statute was passed in 1971, it included some exemptions. The exemptions were designed to protect the work that needs to be done in the delivery of water to the farms and fields of our state.

Lines 16 through 23 of the bill says that "No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral. No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to remove any obstruction from any stream channel, is such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit." Rule 25 of the IDWR rules indicates who the rule applies to and it interprets the exemptions. It basically says that if you are cleaning, maintaining, or constructing, you don't need a permit; and if you are clearing debris from the stream channel that doesn't require equipment, that is an exempt activity. Water users, consultants, attorneys, and courts are relying on these exemptions that are in IDWR rules.

Mr. Semanko said their concern is that the exemption is not being recognized at the county level, particularly in Blaine County. He read a letter from Mr. Charles G. Brockway, a professional engineer in Twin Falls, a firm that specializes in water resources, hydrology, water rights, and water-related civil engineering. He has been engaged in this profession for about 16 years and his firm does a lot of work related to stream channel activities in the Blaine County area. The letter stated that he supports this bill because it addresses a significant problem that impacts dozens of his clients who are water users along the Big Wood River and other rivers and streams throughout the county.

In Mr. Brockway's letter, he stated that Blaine County has created a separate stream alteration permit process and there are no exemptions or exceptions in the ordinance. Getting on the county docket typically takes anywhere from one to three months - depending on the workload of the commissioners. He has also had clients in situations where an activity may be exempted by the State, but not approved by the county for some reason, which leaves the water user in limbo without the ability to deliver his water. Mr. Brockway urged the committee's support of the measure. His letter is on file.

TESTIMONY:

Mr. Tom Bowman, Blaine County Commissioner, provided a handout explaining the Blaine County Ordinance - Stream Alteration Permit Procedure, as well as some "before and after" pictures of work done in Blaine County

Purpose: The Board of County Commissioners hereby finds that in order to more adequately control hazards from flooding existing lands within the floodplain management district, to ensure that the important environmental features of the state and localities are protected and enhanced, to protect life and property in areas subject to natural hazards at flooding, to protect, preserve and enhance fish, wildlife habitat and recreation resources, to avoid undue water and air pollution, to ensure that residents of the county continue to qualify for the national flood insurance program and to ensure that all persons desiring to undertake any stream alteration are afforded equal protection and procedural due process of law, this section is adopted establishing a formal stream alteration permit system and establishing appropriate standards and criteria to govern the issuance or denial of such permits.

GOAL: To work with Idaho Water Users Association to make recommendations to IDWR regarding definitions to Rule 25 exemptions: What does maintenance and construction mean in context of interference with the delivery of water?

Mr. Bowman said they have no objections to the exemptions, but when over zealous water users, or a contractor abuses the exemption rule, it puts the County in jeopardy to participate in the national flood insurance program. They hope their ability to take care of the rivers in the manner they deserve is not taken away. He asked for time to work with the water users association to recommend a reasonable definition for Rule 25 exemptions.

TESTIMONY: **Mr. Seth Grigg, representing the Idaho Association of Counties**, said their legislative committee voted to oppose House bill 137 as amended. They do not disagree that a permit should be required just to pull out debris or maintain the water. What they do object to is constructing and using machinery and local jurisdiction should then be maintained. Mr. Grigg asked the committee to hold the bill so that they can work with IWUA and in the interim, develop some new legislation.

TESTIMONY: **Mr. Benjamin Kelly, representing the Food Producers of Idaho**, said their membership supports the ability to receive water in a timely manner, and after hearing information presented relating to the content of House bill 137a, Food Producers voted to support the bill.

Chairman Pearce indicated that no one else wished to testify. He invited **Mr. Gary Spackman, Interim Director of the Department of Water Resources**, to speak.

TESTIMONY: **Mr. Spackman** said that he was aware of the bill and attended some of the meetings of the IWUA's legislative committee where this legislation was discussed. His understanding of the original exemptions that were in the statute are not being changed, so consequently, it would not impact IDWR and they have not been involved.

MOTION: **Senator Heider** made a **motion** to send H 137a to the floor with a **do pass** recommendation. **Senator Tippetts seconded** the motion.

SUBSTITUTE MOTION: **Senator Stennett** made a **substitute motion** to **hold H 137a in committee for one week** so that Mr. Semanko, IWUA, and the Blaine County Commissioners can reach an agreement. The motion was **seconded** by **Senator Cameron**.

ROLL CALL VOTE: A roll call vote was requested. Voting on the substitute motion, voting **aye** were Senators Stennett, Werk, Siddoway, Cameron and Vice Chairman Bair. Voting **nay** were Senators Tippetts, Heider, Brackett, and Chairman Pearce. The vote was **5-4 in favor** of the substitute motion.

HCR 16: **Representative Hartgen** presented this House Concurrent Resolution. The resolution rejects three subsections and one paragraph in a pending rule of the Department of Environmental Quality relating to Water Quality Standards as being not consistent with legislative intent.

MOTION: **Vice Chairman Bair** made the **motion** to send HCR 16 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. The sponsor will be **Vice Chairman Bair**.

H 138: **Mr. Semanko** presented H 138. This legislation clarifies that the operation and maintenance responsibility of a landowner making a change to or burying a ditch, canal, lateral, drain or buried irrigation conduit as provided by the statute shall run with the land of the landowner and shall continue with the landowner's successor in interest.

MOTION: **Senator Siddoway** made the **motion** to send H 138 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. The **sponsor** will be **Senator Heider**.

- H 22:** This legislation was presented by **Mr. Shelley Keen** from **IDWR**. He stated that this legislation would amend Idaho Code 42-219 governing the issuance of water right licenses. There are two statutory requirements with no practical purposes for administration or regulation. One is that all water right licenses shall be issued under the seal of the Office of the Department of Water Resources. It is not necessary because licenses are also signed by the Director or his designee; and other water right documents with similar authority are not required to be issued with a seal. The other requirement is that all water right licenses shall bear the capacity of the diversion works. This is not necessary because water administration is based on the authorized diversion rate and volume, not on the capacity of the diversion works; information on the capacity of the diversion works is retained in the beneficial use field report; and for administration purposes, licenses are on equal footing with decreed water rights, which do not show the capacity of the diversion works. The time spent on these two requirements could be spent on more important matters.
- MOTION:** **Vice Chairman Bair** made the **motion** to send H 22 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. The **sponsor** will be **Vice Chairman Bair**.
- H 24:** **Mr. Keen** presented H 24. This legislation would delete the requirement that IDWR provide notice of new water right applications by ordinary mail. Since publishing notice on the internet, the number of subscribers to the mailing service has dwindled from 200 to zero. Unless the requirement is changed as proposed, IDWR could be forced to resume notice by ordinary mail if a member of the public were to insist.
- MOTION:** **Senator Cameron** made the **motion** to send H 24 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. The **sponsor** will be **Senator Stennett**.
- H 25:** **Mr. Keen** presented H 25. He stated that this legislation pertains to lapsed water right permits. It requires a beneficial use field report prepared by a certified water right examiner to be submitted when a proof of beneficial use statement is submitted more than 60 days after the lapse notice. The proposal also requires a reinstatement fee of \$250 to be submitted to the department.
- Reinstating a lapsed permit based on a report prepared by a certified water right examiner is far more efficient because it provides more complete information about the established beneficial use, eliminates the need for department personnel to conduct a field inspection to quantify the beneficial use, and allows a water right license to be issued at the same time reinstatement is granted.
- MOTION:** **Senator Siddoway** made the **motion** to send H 25 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. The **sponsor** will be **Senator Siddoway**.
- H 31:** **Mr. Keen** presented his fourth and final bill, H 31. This legislation raises fees to pay approximately 2.4 FTEs needed to meet current demand for processing applications to change existing water rights. There are four components to the proposal. The first component removes water right changes from the fee structure in Idaho Code 42-221A. The second component amends Idaho Code 42-221C to raise the fee for an application to amend a water right permit to \$100. The third component inserts a new sub section, Idaho Code 42-221O, to create a separate fee structure for changes to vested water rights. Idaho Code 42-221O doubles the existing fees for water right changes and includes an additional application fee of \$250 for applications to change the nature of use of a water right. Nature of use changes are the most complicated for IDWR to review and process. The fourth component amends Idaho Code 42-248 to apply the ownership change notification fee to applications to change water rights. Ownership changes add a significant level of complexity to applications to change water rights.

There will be no impact to the General Fund as the proposed changes will generate an estimated total of \$133,000 for the water administration account in FY 2012.

MOTION: **Senator Brackett** made the **motion** to send H 31 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. The **sponsor** will be **Senator Brackett**.

ADJOURN: **Chairman Pearce** adjourned the meeting at 3:15 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
Room WW55 1:30 P.M.
Auditorium WW02 2 P.M.
Wednesday, March 23, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|---|---|
| | 1:30–2:00 P.M. ROOM WW55 | |
| GUBERNATORIAL APPOINTMENT: | Confirmation hearing for Gubernatorial Appointment of Craig Hill to the Lake Pend Oreille Basin Commission to serve a term commencing July 24, 2010 and expiring July 24, 2013. | |
| <u>H 137a:</u> | Alteration, channel of streams | Norm Semanko, IWUA |
| | JOINT MEETING WITH HOUSE RESOURCES & CONSERVATION COMMITTEE | |
| | 2:00 P.M. AUDITORIUM WW02 | |
| PIPELINE & SAGEBRUSH HABITAT: | El Paso Natural Gas – Ruby Pipeline Sagebrush Habitat Conservation Fund | James Cleary, President, Western Pipelines; Debra Ellers and Pat Olsson, Directors, Sagebrush Habitat Conservation Fund |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippetts
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
Room: WW37
Phone: (208) 332-1323
email: jbudell@senate.idaho.gov

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, March 23, 2011

TIME & PLACE: 1:30 P.M. WW55

TIME & PLACE: 2 P.M. Auditorium WW02 JOINT MEETING WITH HOUSE RESOURCES & CONSERVATION

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He said that the Committee had 25 minutes to conduct its business before joining the House Resources & Conservation Committee in the Auditorium. The first order of business was to approve some minutes.

MOTION: **Senator Tippetts** made the **motion** for approval of the minutes of March 9. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.

MOTION: **Senator Heider** made the **motion** for approval of the minutes of March 14. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

GUBERNATORIAL APPOINTMENT: **Chairman Pearce** welcomed **Mr. Craig Hill** of Priest Lake to the meeting.

He has been reappointed to the **Lake Pend Oreille Basin Commission** to serve a term commencing July 24, 2010 and expiring July 24, 2013. The Chairman invited Mr. Hill to tell the Committee about himself and the Basin Commission.

Mr. Hill said that he lives in Priest Lake, was born and raised there, and operates Hill's Resort which his father started in 1946.

He has served on the Commission for six years. The focus of the Commission is water quality and water quantity and covers all aspects that have to do with that for Pend Oreille, Priest Lakes and the drainages around. A lot of work is done regarding lake levels, as well as being informed about issues with new sewer districts. Lake levels are dictated by a number of different things – Fish and Game decides if the lake is going to be up or down and they also give presentations on kokanee spawning and downstream salmon issues.

One of the biggest issues facing the Commission is lack of funding; however, Mr. Hill said that he totally understands that, due to the budget restraints. They have one paid staff member who manages the office and the Commissioners are volunteers who meet monthly.

The **Chairman** asked **Mr. Hill** what would be the most important thing that he will do for the Commission in the next three years. The reply was to monitor the quality of the water, keep the mil foil down, and to keep the mussels out of the Basin.

Senator Heider said a large amount of money was allocated for the Eurasian milfoil problem and asked if we were winning the battle or is the problem getting worse? **Mr. Hill** said they had a good handle on the milfoil. At one time, it covered thousands of acres in Lake Pend Oreille. Now, they are down to about 600 acres. They had no milfoil at Priest Lake, but it migrated its way up there into a couple of the launching ramps. Because of some environmental issues of what they were going to use at Priest Lake, they didn't use as strong amount as they should have. They went from a few square feet of milfoil to sixteen acres. The past two years, they have concentrated on reducing the amount in the lake and they feel they now have a handle on it. If left untreated, it multiplies very fast.

Vice Chairman Bair inquired as to the amount of the budget for the Basin Commission. **Mr. Hill** said that he thought it was around \$80,000. Part of the money is for the salary of the secretary, and the rest is to fund projects as they are presented, such as brochures for public awareness, near-shore projects, and re-vegetation.

Chairman Pearce thanked Mr. Hill for appearing before the Committee and said that voting would take place Monday, March 28.

H 137a:

Mr. Norm Semanko, IWUA, presented H 137a and asked the Committee to refer it to the 14th Order for amending. It had been held one week for a compromise to be worked out between the water users and the counties. They are asking for additional clarification on the amendment drafted by the House that nothing in the bill will affect the flood plain authorities in Chapter 10, Title 46. The additional language that is being added will make it even more clear with regard to Chapter 10, section 46-1022, authority to the counties to adopt the flood plain provisions. He stated that what they are doing does not affect those ordinances or requirements. He thanked Senator Cameron for his help working on the amendment and Senator Stennett who worked with the counties.

TESTIMONY:

Mr. Tom Bowman, Blaine County Commissioner, and also is with the **Idaho Association of Counties and serves on the Legislative Committee**. He stated that the Committee asked that they work together and come up with a compromise. He thanked the staff at IAC and IWUA for helping out and what they learned is the interest they all have with water use. The Legislative Committee voted unanimously to support the amendment.

Senator Cameron said he wished to express his appreciation to Mr. Semanko and the Counties for getting together and working out their differences. He stated that this is how he likes to see things, to the extent possible, to reach compromises.

MOTION:

Senator Cameron made the **motion** to send H 137, as amended in the House, to the 14th Order for amending. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote. **Senator Cameron** will be the **sponsor**.

ADJOURN:

Chairman Pearce adjourned the meeting at 1:50 P.M. and asked the Committee to assemble in the Auditorium as quickly as possible, as there is a Joint meeting scheduled with the House Resources and Conservation Committee at 2 P.M.

CALL TO ORDER:

Chairman Pearce called the Joint meeting to order at 2 P.M. He acknowledged Representative Stevenson, Chairman of the House Resources and Conservation Committee and the members.

He stated that this meeting would be treated as a hearing, and he asked **Mr. James Cleary, President, Western Pipeline Group, El Paso Corporation**, to take an oath that he would swear to tell the truth, the whole truth, and nothing but the truth. Mr. Cleary said that he would. (And he did take the oath.)

PRESENTATION: Mr. Cleary gave a Power Point presentation regarding the Ruby Pipeline/Sagebrush Habitat Conservation Fund Update.

The Ruby Pipeline is from Opal, Wyoming to Malin, Oregon and is 680 miles of buried 42" natural gas pipeline. It will bring Rockies gas supplies to the West Coast markets. The capacity is 1.5 bcf/day and the cost was \$3.55 billion. Fourteen thousand acres were directly impacted in construction and is to be re-vegetated. There are four compressor stations and access to the pipeline every 50 miles. The route follows existing roads or transmission lines where possible. (Mr. Cleary provided a map of the pipeline to all Committee members.)

The Ruby Pipeline filed application for certificate of necessity with the Federal Energy Regulatory Commission (FERC) on January 27, 2009. On April 5, 2010, FERC approved it. Notice to proceed with construction was on July 31, 2010. They impacted about 14,000 acres along the right-of-way for the pipeline. There were public lands issues. They consisted of the following: route was through sage-steppe habitat, included sage grouse, pygmy rabbit (both ESA-WBP) areas; streams with ESA listed fish; and traditional tribal cultural areas.

Western Watersheds Project (WWP) is an environmental advocacy group with a mission "To protect and restore western watersheds and wildlife through education, public policy initiatives, and litigation." They focus on public lands grazing, energy development, and other human disturbances. They have significant litigation successes and submitted extensive comments on Ruby Pipeline; similar track with Oregon Natural Desert Association (ONDA).

There were lawsuits challenging the BLM ROD and the FERC certificate filed in the 9th and DC Circuit Courts of Appeal. Litigants include CBD, Defenders of Wildlife, Sierra Club-Toiyabe Chapter, Fort Bidwell Tribe, Summit Lake Paiute Tribe, and Lincoln County, Wyoming and a coalition of other counties. WWP and ONDA chose to settle.

As of mid-February, 2011, the pipeline was approximately 85% "welded out". El Paso has recently announced that it expects Ruby Pipeline to be in service in July, 2011. Several slides were shown of different phases of construction and also of planting of approved re-vegetation seed mixture. There were 5,000 construction workers involved with the pipeline.

The WWP/Ruby settlement agreement was signed June 29, 2010. There were voluntary conservation measures for Sage Steppe habitat to benefit wildlife.

The Sagebrush Habitat Conservation Fund was incorporated as a non-profit corporation on July 1, 2010 with a three person board of directors. There is one WWP representative, one Ruby Pipeline representative; and one "independent" representative. The money does not go to WWP. It is used for conservation purposes and will not be used for the mission of WWP. Ruby paid \$2,000,000 in escrow, which was released quarterly. After the pipeline is in service, Ruby will pay \$1,300,000 annually for 10 years. In that 10 years, \$15,000,000 will have been paid.

SPEAKER:

Mr. Cleary introduced **Ms. Debra Ellers, President and Executive Director of the Sagebrush Habitat Conservation Fund.** Chairman Pearce asked Ms. Ellers if she would take an oath to tell the truth, the whole truth, and nothing but the truth and Ms. Ellers said that she would. (And she did take the oath.) She stated that she was happy to talk about the Fund's goals, to explain its mission, and why it is beneficial to all stakeholders.

The mission statement of the Sagebrush Habitat Conservation Fund is "To protect and restore sagebrush habitat in the American West to benefit native wildlife through voluntary conservation." Some of the **methods of conservation** are:

- buying and retiring federal grazing permits where authorized from interested willing seller permittees on an individual basis;
- acquiring property interests from willing sellers, (e.g. property in fee title, conservation easements);
- leasing state or private lands for wildlife conservation;
- working with other non profits, agencies or others to fund comprehensive land protections for native wildlife; and
- restoring native plants and water sources to benefit native wildlife.

Potential locations for projects through July 1, 2015:

- California: Lassen, Modoc, Nevada, Placer Siskiyou, Sierra
- Idaho: Bear Lake, Cassia, Franklin, Oneida, Owyhee, Twin Falls
- Nevada: Carson City, Churchill, Elko, Eureka, Humboldt, Lander, Lyon, Pershing, Storey, Washoe, White Pine
- Oregon: Deschutes, Harney, Klamath, Lake, Malheur
- Utah: Box Elder, Cache, Davis, Morgan, Rich, Summit, Tooele, Weber
- Wyoming: Lincoln, Sublette, Sweetwater, Teton, Uinta

While the Fund may work in any of these places on individual projects, it is not required to. After July 1, 2015, the Fund may engage in voluntary conservation projects anywhere in the West with sagebrush landscapes. There are **two options** for interested permittees: 1) **statutory** (congressional) authorization; and 2) agency **land use** plans.

Examples of statutory permit retirements:

- Great Basin National Park (1996)
- Steens Mountain Wilderness (2000)
- Cascade Siskiyou NM (2009)
- Owyhee Canyonlands Wilderness (2009)

Examples of land use plan permit retirements:

- Greater Yellowstone Area – national forests (predator conflicts)
- Sheldon National Wildlife Refuge – protection of pronghorn antelope, sage grouse

Grazing permit issues:

- Grazing permits have an economic value
- Not real property, can be revoked by government without compensation
- Ranching operators approaching retirement, "land-rich, cash-poor" may have no heirs wanting to continue in agriculture.

Mechanics of permit retirement:

- Interested permittee offers permit for retirement
- Mutual agreement on terms
- Statute or land use plan allows retirement
- Compensation provided to permittee based on AUMs
- Permit is donated or waived back to federal government

Benefits of permit retirement:

- Voluntary, free market approach
- Uses private funds, not government money
- Gives permittee money for retiring or retooling operations
- Innovative option to resolve resource conflicts
- On the ground projects to benefit native wildlife
- Available where permitted by law or regulation

One rancher's view:

"The buyout is not the end of ranching in the West. Far from it. We can use that money to continue ranching on more suitable land or start other businesses. It would be a godsend for many rural communities."

In summary, **Ms. Ellers** said that for someone being in Idaho for 25 years and seeing a lot of contention, she feels that this is a way to collaborate and talk to these issues for the protection of wildlife, whether it's sage grouse or pronghorn antelope.

Chairman Pearce invited **Ms. Patricia M. Olsson** to speak, as she represents the Fund also; however, she declined to speak but said she would answer any questions, if asked.

DISCUSSION:

Some of the topics discussed were the economic impacts, environmental impacts, other supplying pipelines, and conflicts.

Representative Raybould inquired as to the conflict between the Pipeline company and environmental groups that caused the parties to negotiate a settlement agreement. **Mr. Cleary** stated that from his view, there should not have been a conflict, but the environmentalists looked at the impact on different species during construction –such as plants and sage grouse. **Mr. Cleary** said they had had an environmental impact study, which was two years in the making and is 700 pages thick. There are six lawsuits pending in the 9th Circuit and D.C. Circuit by groups whose views are that whatever was done, was not enough.

Senator Siddoway questioned why El Paso Gas is funding an organization that would like to remove livestock from public land in Idaho and then questioned as to how removing livestock from public lands in Idaho will alleviate the scars left in Utah and Nevada by El Paso Gas. **Mr. Cleary** said that he respectfully disagrees that their work is oppressing. Environmental litigation over energy projects have happened for decades and will continue to happen. Some settlements have been made along the way, not by El Paso, but by others. **Mr. Cleary** said that they set up funds, not a Western Watersheds Fund, but an independent fund controlled by an independent board with a mission that is very different from Western Watersheds'. It is a mission that has conservation at its center, including projects such as a study on rotational grazing and getting help from BLM and the State. **Senator Siddoway** commented on how Western Watersheds have removed 4,000 acres of state lands due to conflicts and the land is now completely out of production. Their bragging rights also include closing down 800,000 acres in the western United States to

livestock grazing and the Senator doesn't understand how you can partner up with someone like that when the ranchers rely on the resources. **Mr. Cleary** said their mission is very different from Western Watersheds and El Paso's mission is to not end grazing on public lands.

Representative Lacey inquired as to the rationale of including southern Idaho in the settlement, when Idaho is getting nothing from the pipeline. **Mr. Cleary** said that when they looked at the impact of 14,000 acres, there should be a way to litigate and be approximate to the pipeline, and that included the counties it goes through and the adjacent counties. **Representative Lacey** then asked if the money was "blood money". **Mr. Cleary** said that he didn't view it that way and that they are litigating with six other parties. As a businessman trying to develop a \$3.5 billion project that is usually time sensitive, resolving issues where they could, he thought it was the right thing to do. He stated that they might not like the statutes that they have to deal with under the National Environmental Policy Act and the Endangered Species Act, but the fact that Western Watersheds and other groups, including the six groups that are litigating, have these statutes and can challenge the project.

Representative Vander Woude asked why one settlement was made and yet there are six outstanding litigants. **Mr. Cleary** said that two settlements had been reached – one with Western Watersheds and the other with Oregon Natural Desert Association. He stated that they were unable to reach agreements with the other six. He stated that his company had fought and won five emergency stays for the 9th Circuit and D.C. Circuit. Some of those were under statutes from the Endangered Species Act where the law favors the species, but they prevailed and will probably see a court decision in the summer. The impact on the company for a three month stay was in the range of \$300 million. **Mr. Cleary** said as part of his job, it is to execute litigating risks, including risk of delays. As their business judgment, it was better to settle with some, rather than not settling at all. **Representative Vander Woude** inquired as to what was so different about the litigation that was settled compared to what is still pending. **Mr. Cleary** said that he didn't think it was so much as something different, but his job as an executor is to litigate risk, and they resolve conflicts when they can. They could not resolve some conflicts with the other groups.

Representative Bedke said that he knows some of the ranchers in the area where the pipeline is and asked **Mr. Cleary** to help change some of the federal land management policies, rather than use "blood money" to put the ranchers out of business. They are frustrated. **Mr. Cleary** said that he understands the frustration and the key is they will only do transactions on permits with willing sellers. He stated that this fund is not about working in tandem with Western Watersheds where they file lawsuits against the permittees. He said this is about people who have their own reasons for doing transactions. **Mr. Cleary** said it is their intent to work with the Public Lands Council.

Representative Andrus asked **Mr. Cleary** if he would give his word that none of the money would be used to bid against permit holders who are not necessarily willing to sell. **Mr. Cleary** responded by saying the Fund's principles provide only for buy-outs from willing sellers and he gave his word.

Representative Harwood said his question is about "willing buyer and willing seller". He stated, "When Western Watersheds made their proposal to you and shook you down for \$15 million and said they wouldn't sue, at that point, you became a "willing seller" and I understand why you did it as a business person, but I don't believe you are a "willing seller". Am I wrong?" **Mr. Cleary** said, "El Paso is a large company and they deal with many projects and conflicts. There are six major lawsuits pending in the federal courts over this project. He said that he doesn't view it as a shakedown – the fact is Western Watersheds is using the laws as they exist. The big issue was - "Do we litigate with you, like the six others, or say here is an issue where we can solve it in some way." People may have concerns about the solution, but Mr. Cleary said they thought their solution was a better outcome.

Representative Hagadorn stated that because El Paso's agreement does impact the grazing leases on state land, as well as BLM land in our state, he asked if it would be possible for us (the legislature) to get a copy of that agreement so that they can better understand what the agreements are with the parties, so that they know how that's going to impact those lands in our state. **Mr. Cleary** said that what they are trying to do today is to outline the agreement in what it does and doesn't do. The agreement is a private settlement and in the absence of another piece of litigation, he said that he wouldn't have trouble making that agreement available if Western Watersheds agreed. One of the 9th Circuit cases involves a lawsuit brought by a county in Wyoming and their complaint is that this settlement had an impact on projects, and should have been considered by agencies as part of the authorizing documentation. Until that lawsuit is resolved, he cannot release it.

Representative Barrett stated that most of the committee members are sympathetic to Mr. Cleary's predicament and she asked if it is environmental groups that are in the "wings" waiting for a hearing. **Mr. Cleary** said that three groups are environmental groups and they are Defenders of Wildlife, Sierra Club - Toyiabe Chapter, and Center of Wildlife. **Representative Barrett** then inquired if the funds can be used any way Western Watersheds wants to use them, including facilitating Congressman Simpson and his CIEDRA effort (Central Idaho Economic Development and Recreation Act). She said that what Mr. Cleary has done with the Fund is that "he has dodged the bullet and has funded a firing squad that is coming out for the rest of us" and she doesn't appreciate that.

Representative Boyle asked if this fund was part of the litigation for the 14,000 acres. **Mr. Cleary** said there are two types of litigation. One is because they are obligated under BLM rules and Fish and Wildlife Rules and this fund is not part of that. The environmentalists litigants believe that the litigation El Paso is doing on the federal environmental impact statement is inadequate. The concept of the fund is to mitigate impacts. **Representative Boyle** then asked Mr. Cleary if he would put in their bylaws that they would not bid against ranchers on state land leases. Mr. Cleary responded by saying he would like to take that under advisement with the Board of Directors.

Representative Wood asked if the agreements with the people was a caveat of getting the FERC license to go ahead with the pipeline. **Mr. Cleary** said that the agreements with Western Watersheds and ONDA were issued after they received FERC authorization, April 5, 2010. The lease agreements were issued in June and July.

Representative Pence inquired if El Paso intended to increase funding. **Mr. Cleary** indicated that El Paso Ruby Pipeline does not plan to increase its funding of that fund, but the fund is set up as a 501 C 3 corporation, so it may receive funding or grants from other sources.

Senator Tippetts asked Mr. Cleary if his company has made similar offers to the other litigants that they made with Western Watersheds. **Mr. Cleary** said they made an offer to Western Watersheds, then made a similar offer to ONDA, focused on the end projects in the Oregon and Nevada area. They tried to bring the others in but did not make a separate, independent offer (to the best of his recollection).

Representative Lacey directed his question to Ms. Ellers. He said that with the money Western Watersheds has, would she give her word not to bid on any grazing allotments within the designated counties. **Ms. Ellers** first clarified that she is not on the staff or Board for Western Watersheds and is a practicing attorney in the Boise area. She said that she cannot bind Western Watersheds in any way.

Senator Brackett thanked Mr. Cleary for agreeing to be here today and welcomed him back to Boise. He then said that the funds are not to be used for the mission of WWP, but he feels it will further the mission of WWP. One thing he wanted to stress are the counties adjacent to the pipeline on either side have a high percent of federal land. There is a small portion of land that is the tax base of these counties. As the permits are retired, it destroys the tax base and strains the rural communities' basic functions, such as the schools, highways, etc. **Mr. Cleary** said that he doesn't see that the fund materially impacts the communities. They are focused on buy-outs and the fund has a broader array of measures that they are pursuing. He stated that they are sensitive to any local impacts and it is not their intent to impair local communities or their tax bases.

Representative Wheeler inquired as to who will be on the Board in five years. **Mr. Cleary** said the structure is that the funding from El Paso Ruby Pipeline have a three member Board and one of the members is to be from the El Paso Gas Company.

Chairman Pearce thanked Mr. Cleary, Ms. Ellers, and Ms. Olsson for the program presented today.

ADJOURN: He then adjourned the Joint meeting at 3:20 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

Representative Stevenson
Chairman

AMENDED #1 AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, March 28, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|----------------------------------|--|---|
| GUBERNATORIAL APPOINTMENT | Committee consideration will be given to the Gubernatorial appointment of Craig Hill to the Lake Pend Oreille Basin Commission to serve a term commencing July 24, 2010 and expiring July 24, 2013 | |
| <u>H 272</u> | Water leases | Rep. Stevenson |
| ECONOMIC IMPACT BY IMA | Power Point Presentation: Idaho Mining Association's Economic Impact on the State of Idaho | Jack Lyman, Executive Director, IMA |
| <u>RS20692</u> | Provides that commercial tanneries receiving wildlife from a licensed taxidermist or fur buyer shall satisfy all record keeping requirements | Sen. Pearce |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 28, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M. He said the first order of business would be to give Committee consideration to the **Gubernatorial appointment of Craig Hill**.

Mr. Hill was reappointed to the Lake Pend Oreille Basin Commission to serve a term commencing July 24, 2010 and expiring July 24, 2013.

MOTION: **Vice Chairman Bair moved** to send the gubernatorial appointment of Craig Hill to the Lake Pend Oreille Basin Commission to the floor with the recommendation that it be **confirmed** by the Senate. **Senator Heider seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Keough** will be the **sponsor**.

H 272: **Chairman Stevenson of the House Resources and Conservation Committee** explained H 272. He said the legislation is to create a more certain and predictable process for the leasing of water for hydropower purposes by clarifying the relationship between the private, two-party water leasing provisions of Idaho Code sections 42-108A and 42-108B, and the provisions of the water supply bank and rental pool statutes, Idaho Code sections 42-1761 through 42-1766. This will facilitate the rental or leasing of water for hydroelectric generation purposes which provides low-cost electricity to Idaho.

Chairman Stevenson said the legislation has been worked on by Water District 01, the Ground Water Users, and has been before the Idaho Water Board.

TESTIMONY: **Mr. Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, Inc.** said they are an association of ground water districts, irrigation districts, and cities and agri businesses on the Eastern Snake Plain Aquifer. They are in support of H 272 because it is more of a local interest type of call. It allows the local rental pool committees to make a determination if rentals outside the basin are going to be injurious to the water users within the system.

TESTIMONY: **Mr. Norm Semanko, Executive Director, Idaho Water Users Association**, stated that their legislative committee has reviewed H 272 and they are in full support of it. An underlying principle is that the water bank rules provide necessary protections for water users.

MOTION: **Senator Cameron** made the **motion** to send H 272 to the floor with a **do pass** recommendation. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote. **Senator Cameron** will be the **sponsor**.

PRESENTATION: **Mr. Jack Lyman, Executive Director, Idaho Mining Association**, gave a Power Point presentation titled "**An Economic Impact Analysis of Operating Member Company Operations in the State of Idaho during 2010.**"

Mr. Lyman started his presentation by showing the locations of the mines in Idaho. Hecla Mining at the Lucky Friday Mine; U.S. Silver at Galena Mine; Silver Partners at Sunshine Mine, and all are located in north Idaho. Formation Capital has a cobalt mine between Salmon and Challis and Thompson Creek Mine is near Clayton in central Idaho. J.R.Simplot Company is in Pocatello and eastern Idaho; and Monsanto and Agrium are also in eastern Idaho.

The mineral production from 2005 to 2009 was \$719 million for phosphate; \$2.5 billion for moly and silver; \$505 million for sand and gravel; and \$702 million for other minerals.

The average number of employees over the past five years was 2,509. The average wage for 2010 was \$87,622. Direct IMA related employment was 2,860 and indirect employment was 5,530.

Following are the 2010 Statewide Employment figures for industries and number of employees:

| | |
|---------------------------|-------|
| Agriculture | 214 |
| Construction | 138 |
| Manufacturing | 242 |
| Trans., Comm. & Utilities | 468 |
| Wholesale & Retail | 1,181 |
| Fin., Insur. & Real Est. | 459 |
| Services | 2,721 |
| Household | 107 |
| TOTAL | 5,530 |

IMA's total impact for 2010 statewide was \$857 million. North Idaho's share was \$184 million; Central Idaho was \$115 million; and Southeast Idaho was \$558 million.

Local revenue impacts for 2010 are as follows:

Property taxes on mining and mineral processing facilities – \$7,400,000
Employee property taxes – \$11,000,000
Property taxes from secondary employment – \$9,200,000
TOTAL – \$27,600,000

State revenue impacts for 2010 (attributable to direct and secondary economic impacts by IMA members):

Personal income tax – \$24,606,000
Sales tax – \$27,675,000
Corporate income tax – \$3,257,900
Motor vehicle license and fuel tax – \$6,344,500
Other state revenue – \$1,629,000
TOTAL –\$63,512,700

In 2010, contributions to state and local tax revenue from one miner = \$33,500; 500 miners = \$16,750,000; and 1,000 miners = \$33,500,000.

During the presentation, pictures of equipment and the areas where the mining was occurring were shown, which made the presentation more interesting.

Chairman Pearce thanked Mr. Lyman for his presentation and said the Committee needed to be aware of how much the mining industry contributes to the state's economy.

**PASSING OF
THE GAVEL:**

Chairman Pearce turned the gavel to **Vice President Bair** as he wished to present his bill, Senate Bill 1197.

S 1197:

He stated that the purpose of this legislation is to amend Idaho Code 36-603 to provide that commercial tanneries receiving wildlife from a licensed taxidermist or fur buyer shall satisfy all record keeping requirements by recording the license number of each taxidermist or fur buyer and recording tag numbers of attached tags as required by law. It also provides procedures for states that do not require fur dealer or taxidermy license.

TESTIMONY:

Ms. Sharon Kiefer, Assistant Director, Idaho Department of Fish and Game, testified that the Department has reviewed S 1197 and believes this bill does provide important and useful clarification for the Department, for taxidermists, fur buyers and tanneries regarding record keeping requirements for lawful origin and proof of ownership. Ms. Kiefer said she wanted to make the distinction between inventory control and lawful origin.

"Because the Fish and Game Commission has not had an opportunity to review this bill, they do not have a policy position at this time, but staff will certainly be advising the Commission at their meeting tomorrow that this bill provides important and needed clarification" stated Ms. Kiefer. She closed her testimony by saying that they appreciated providing this important clarification on an emergency basis.

Senator Siddoway inquired as to where the obligation lies with the tagging of a hide. **Ms. Kiefer** said the obligation of lawful origin does lie with the fur buyer or taxidermist. They are required to be able to demonstrate hides in their possession came to them via lawful origin. An in-state hide that has a pelt tag, that is representative of lawful origin, but also, if you were to take a hide to a fur buyer or taxidermist, you would be asked to provide your name, license number, etc. For an out-of-state pelt coming in, they still have an obligation to demonstrate lawful origin. It may not have a pelt tag, but there is still some need to demonstrate that the pelt was lawfully taken. This bill provides a great clarification in that it really establishes who retains that lawful origin record. In this case, in section 1, it is the taxidermist or fur buyer; they, then, can provide their license number to the tannery and that stands as the obligation for proof of lawful origin.

TESTIMONY:

Next to testify was **former Senator Gary Schroeder** from Moscow. He has owned and operated a business there called Moscow Hide and Fur since 1973, and is speaking on his own behalf. A copy of his testimony is inserted into the minutes and copies of the Exhibits referred to are on file.

Mr. Chairman and members of the Senate Resources and Environment Committee:

A recent agency interpretation of 36-606 Idaho Code that the phrase "produce satisfactory record of lawful origin and proof of ownership" (Exhibit A) required licensed taxidermists and fur buyers (TFBs) to provide the names and addresses as well as licensing information of their customers when subcontracting tanning to Idaho's tanneries necessitates this legislation. Let me explain. Currently, both tanneries and taxidermists are required to have a TFB license because they "prepare for preservation" wildlife and the parts thereof for the public (36-601 Exhibit B). When a hunter or trapper brings a pelt to the establishment, certain information is recorded in accordance with 36-603 (Exhibit C) and this includes the name and address, license number, date of kill.

Heretofore, common industry practice by licensed TFBs when subcontracting with Idaho tanneries has been to submit their TFB license number to the tannery.

The new interpretation would require a TFB to give the tannery the names and addresses of their customers in addition to licensing information. The tannery could, if they chose, then solicit business from the customers of the licensed TFBs.

Let's say, for example, that Taxidermist Smith had a customer bring 10 dried beaver pelts to him for tanning. Taxidermist Smith charges \$40 each for tanning beaver pelts. He ships the pelts to an Idaho Tannery that charges \$20 each. The \$200 profit that Taxidermist Smith realizes helps him pay his overhead and living expenses. If the tannery was provided with the name and address of Taxidermist Smith's customer, they could send the customer a price list. The customer would quickly realize that they could save money by shipping directly to the tannery and save money. The question quickly becomes one of why government would require businesses to turn over their proprietary business information to their competitors.

However, Taxidermist Smith also understands that the tannery could mail his customers a price list and undercut him and so he instead ships the beaver to a tannery out of state where he doesn't have to provide a list of his customers. The revenue is then spent out of state and Idaho loses business, jobs, and taxes.

The bill provides that Taxidermy Smith can send his TFB license number to the tannery along with the shipment, as has been the understood practice. Agency personnel can inspect the records at Taxidermy Smith's residence to determine ownership and other information should the need arise.

Some states do not license taxidermists and the language also provides for information to be collected in those instances.

If I had thought that 36-606 would ever be interpreted this way, I would have clarified the language during the 18 years I was in the Senate.

When the code was written on commercial traffic in wildlife, Idaho did not have any tanneries and we have "fit" them into the existing statutes rather than have a code section on tanneries. Industry intends to bring to you a bill on tanneries next session.

And finally, and just for your information, there was a time when some enforcement agents thought that 36- 606 gave them the authority to walk into a TFB business and demand that the owner prove the origin of any antler, hide, deer toe or other wildlife that was there. Of course, this could be very difficult, because antlers, for example, are commonly cut up so that individual pieces can be sold to precise user groups. A letter from Deputy Attorney General W. Dallas Burkhalter on July 21, 2009 (Exhibit D) noted that when a TFB satisfied the record keeping requirements of Idaho Code, that the provisions of 36-606 are also met.

It would appear that when a licensed TFB that receives items for processing also satisfies the requirements of Idaho Code by recording required information, that the requirements of 36-606 should also be met. Any questions that might arise could be answered by an inspection of the records at the location of the TFB.

Please, send this bill to the floor with a do pass recommendation.

MOTION: After some discussion, **Senator Tippetts** made the **motion** to send S 1197 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote. **Chairman Pearce** will be the **sponsor**.

Vice Chairman Bair passed the gavel back to Chairman Pearce.

ADJOURN: **Chairman Pearce** thanked Senator Schroeder for appearing before the Committee. He then adjourned the meeting at 2:45 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Monday, April 04, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------|-------------------------------|------------|
| H 318 | Ground water districts | Rep. Bedke |
| H 231a | Hunting, certain aircraft use | Rep. Moyle |
| H 247a | Special big game auction tags | John Watts |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell
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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, April 04, 2011

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P.M.

MOTION: **Senator Siddoway** made a **motion** for approval of the minutes of March 16, 2011. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

H 318: Representative Bedke was to present H 318, but due to a conflict in scheduling he was unavailable. **Vice Chairman Bair** presented the bill.

This bill sustains an agreement that was made this past Friday between the Blue Lakes Trout Farm, its President, Kay Hardy, and several of the ground water districts in the Magic Valley area. (A press release was issued and provided to the Committee.) Vice Chairman Bair said the purpose of the agreement is to literally make those fish farm water calls go away. It involves the ground water districts purchasing the Blue Lakes Trout Farm from Ms. Hardy and her family and they will need to go to a lending institution to be able to do that. The legislation that is before the Committee addresses liens and assessments. Heretofore, when ever a ground water district made water assessments on an annual basis, those water assessments did not have first lien priority. Mortgages on the farms were in first place.

The Vice Chairman said the legislation is to amend 42-5240 to clarify that assessments from ground water districts are liens against the lands. Notice of the assessment delinquency must be sent to the mortgage or deed of trust holder at least sixty (60) days prior to any foreclosure sale of the property. Nothing in this legislation alters or affects any liens of water-related districts or entities authorized pursuant to state law.

There was some concern regarding the bill; however, Vice Chairman Bair said that he had asked Senator Davis to review it and he felt comfortable with it. Also, this legislation has been reviewed with the lenders in the Magic Valley and they have given their seal of approval.

MOTION: **Senator Siddoway** made the **motion** to send H 318 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. **Vice Chairman Bair** will be the **sponsor**.

H 231a: **Representative Moyle** presented his bill, H 231a, which prohibits the use of aircraft in the taking of game. It is unlawful to spot game from the air, communicate with hunter(s) on the ground, and then shoot the game on the same calendar day. Representative Moyle said it is easy to spot the planes that are searching for game as compared to the planes that fly hunters in and out of campsites. If the aircraft is used to locate game, then hunters must wait a calendar day.

TESTIMONY: **Mr. Grant Simonds, Executive Director for the Outfitters and Guides Association**, stated that they had worked with the sponsor on this legislation.

The Association's concern is that this legislation not have any unintended consequences relative to traditional operations of outfitters who depend on air taxis to shuttle their hunting clients to the backcountry and wilderness areas. Idaho has numerous recognized state and federally managed airstrips that clients of hunt outfitters utilize.

The flight of clients is not used in any way to locate game. It simply is a mandatory component of transportation to their Idaho hunting destination. Traditionally, clients arrive at a backcountry airstrip and are immediately moved by horseback with their rifle and supplies to the spike camp. This would be deemed hunting. To require clients to stand around base camp for a day would be several more nails in the industry's coffin.

TESTIMONY: **Ms. Sharon Kiefer, Assistant Director, Idaho Department of Fish and Game**, said that the technical questions had been adequately answered by the bill's sponsor and there was not a need to add anything more.

MOTION: **Senator Heider** made the **motion** to send H 231a to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Tippetts**. The motion **passed** by unanimous voice vote. **Senator Heider** will be the **sponsor**.

H 247a: **Mr. John Watts** presented H 247a. This legislation is to provide for special big game auction tags designated as Governor's Auction Tags. It also provides authority to the Fish and Game Commission to designate limited big game tags for auction similar to existing statutorily authorized bighorn sheep and wolf auction tags. The tags would be taken from the nonresident tag pool thereby not diminishing resident hunting opportunity. The number of tags designated are up to three elk, deer and antelope; and only one moose, wild sheep, and mountain goat per year. Funds received from auction would be directed to the fish and game department for use toward hunter access, big game management projects, habitat management projects and research and planning activities to facilitate habitat solutions.

Mr. Watts provided a packet of information that consisted of permits from various states with the dollar amount of each; a picture of pronghorns grazing between Boise and Mountain Home; and a statement from Brad Morlock, President, Idaho Wild Sheep Foundation, dated 3/29/11, supporting H 247a.

Another statement was given to the secretary of the Senate Resources from Mr. Morlock, dated 4/4/11, stating that they supported the original version of H 247 because it supported all of Idaho's wildlife, but they do not support the current amended version because it does not support bighorn sheep in two areas. Those areas are: the reduction in the administrative expenses paid for the lottery bighorn sheep tag from 25% to 5%; and the funds raised under this bill do not go toward bighorn sheep management.

TESTIMONY: **Mr. Douglas Schleis**, representing himself, said that there are several problems with the bill. He pointed out that there was no public process regarding the bill and probably 95% of Idaho's sportsmen are not aware of the bill. They would no doubt be appalled that we would take our biggest and best animals and auction them off to wealthy out-of-state (or in-state) hunters. The season is for 90 days, plus any weapon, any time, and any open zone. These are special privileges, not afforded to the average hunter. Mr. Schleis posed the question - if there is great support for this bill, where is Rocky Mountain Elk? where is the Mule Deer Foundation? where are the Deer Hunters of Idaho? An unintended consequence of this bill is the lottery tag.

Also, bringing the bill in late in the session, with limited testimony and very little public notice, is not the way to do this - it should have been brought about by the Department stated Mr. Schleis.

TESTIMONY: **Ms. Sharon Kiefer, Assistant Director, Idaho Department of Fish and Game**, said the Department did have a bill that was within the context of the existing special auction tag and the Commission retained discretion where they could be used and were within the hunt times as currently prescribed by the Commission proclamation. The bill was pulled and will not be submitted for consideration.

TESTIMONY: **Mr. Doug Sayer** said that he is representing himself. To make a point of clarification, he stated that he and John Watts wrote the language in the bill and they are friends and fellow sportsmen. He said they wrote the bill as an investment in the future and they looked closely at the state wildlife policy – which is to preserve, protect, perpetuate and manage. Mr. Sayer said this bill was written for the Department as a tool with lots of flexibility and the intent was not to limit, but to allow them to add the distinction between units where they wish the hunts to take place.

TESTIMONY: **Mr. Bryan Moore, treasurer, Idaho Wild Sheep Foundation**, testified in opposition to the bill.

TESTIMONY: **Mr. John Caywood**, representing himself, also testified in opposition to the bill.

TESTIMONY: **Mr. Burk Mantel**, also representing himself, submitted seven problems with H 247a. They are:

1. The original auction tag bill promise made to legislators in 1986 - "no more auction tags."
2. Compromise with the Cattlemen's Association in 1986 - "moneys raisedmay not be used to transplant additional bighorn sheep into that portion of southwest Idaho....."
3. Citizen's committee to review proposals and make recommendations to the Department.
4. Thousands of elk, deer and antelope tags available. Only 87 bighorn sheep tags and two being sold already. Delete bighorns from this bill.
5. This kind of bill should be brought forward by Fish and Game and should go through a public comment period. H 247a is usurping IDFG's authority.
6. How much support does this bill have from sportsmen?
7. Other ways to raise money without selling wildlife to the highest bidder.

MOTION: **Senator Siddoway** made the **motion** to send H 247a to the **14th Order**. The motion was **seconded** by **Vice Chairman Bair**.

**SUBSTITUTE
MOTION:**

Senator Heider made a **substitute motion** to hold H 247a in Committee. The motion was **seconded** by **Senator Werk**. A roll call vote was requested. Voting **aye** were Senators Stennett, Werk, Tippetts, Heider, and Chairman Pearce. Voting **nay** were Senators Brackett, Siddoway, Cameron, and Vice Chairman Bair. The vote was **5-4 in favor of the substitute motion**.

MOTION:

Senator Brackett said that he has read the minutes of March 23, 2011 and made a **motion** that they be approved. **Senator Stennett seconded** the motion. The motion **passed** by unanimous voice vote.

**PAGE
RECOGNITION:**

Chairman Pearce asked the **Committee Page, Mitchell Jensen**, to come forward and be recognized for his contribution to the Committee the second half of this legislative session. The Chairman presented "Mitch" with a letter of recognition, signed by the Committee members, and a gift, which was a knife and belt buckle, inscribed with a picture of an elk.

"Mitch" was pleasantly surprised, to say the least. He was asked to tell the Committee his future plans.

He said that he will be leaving on a two year Mission in December, then will go to college to study law, then hopes to become a Senator.

ADJOURN:

Chairman Pearce wished Mitchell good luck, then adjourned the meeting at 3:15 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary

AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
2:00 P.M.
Auditorium WW02
Wednesday, April 06, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--------------------------------------|--|---|
| <u>NOTE CHANGE OF TIME AND PLACE</u> | | |
| <u>H 343</u> | Declarations of emergency, issuance of executive orders and proclamations relating to wolves | Speaker Denney, Representative Boyle, Chairman Pearce |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chair Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

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MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, April 06, 2011

TIME: 2:00 P.M.

PLACE: Auditorium WW02

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 2 P.M. He announced that the meeting could only be for one hour as the Committee members are due on the Senate floor at 3 P.M. Testimony will be limited to three minutes and the timekeeper is Vice Chairman Bair.

H 343: **Representative Hart** provided the opening remarks on H 343. He stated that this bill deals with wolves and he provided some history relating to the wolf issues, starting in 1995. Thirty five wolves were introduced in central Idaho and was told it would increase to about 100 wolves. Since then, the figure is estimated to be between 800-900.

The Statement of Purpose for the bill indicates that the legislation provides for declarations of emergency, issuance of executive orders and proclamations relating to wolves. The legislative intent lays out some of the problems that the state is having with wolves. There is a human-wolf conflict, as well as livestock-wolf conflicts. Conflicts have been reported since 2002 and have been growing worse.

Since the wolves have been in Idaho, they have been listed, unlisted, and listed again as endangered species. Under the Endangered Species Act (ESA), these wolves are considered "non-essential experimental." The bill allows for the Governor of Idaho to declare an emergency if there are certain findings, as outlined in the bill. They are: if a wolf is a carrier of a disease harmful to humans, livestock, pets and wild game; frequenting areas inhabited by humans; frequenting areas that are largely ranchland with livestock; impact to big game herds; and measurable diminution in the value of businesses tied to outfitting and other game or hunting based businesses.

PRESENTATION: **Mr. Casey Anderson, manager of O X Ranch**, provided a Power Point presentation. He said they have been involved with the wolf-cattle interaction setting the past four years and there are several partners in the study. It includes USDA, Oregon State University, University of Idaho, and the Oregon Cattlemen (who put up the money to collar wolves and cows to find out how they interact). This pack is known as the Snake River Pack.

The slides included data, pictures of cows and calves killed by wolves, and the migratory route of wolves. In 2009, Mr. Anderson said they started experiencing huge losses of depredation. Fifteen wolves were removed from the pack and there were at least 28 wolves living on his private ground and allotments in the area. There are other impacts on the cattle - sometimes they cannot be sold due to the blemishes and injuries to them. Other impacts are loss of weight (as much as 100 pounds) and the conception rate is down ten percent (10%). Losses in 2009 amounted to a quarter of a million dollars for his ranch.

Safety is also a large concern of Mr. Anderson's. Data shows that wolves are closing in on houses in the rural areas. Due to time constraints, he had to stop his presentation and the Chairman apologized for that.

TESTIMONY: **Commissioner Skip Brandt, Idaho County**, and former Senator, said he wanted to just say that "Idaho has danced the dance." He was here in 2001 when the House Joint Memorial was passed and told the feds that Idaho wanted the wolves out of here. In 2003, he and Senator Hawkins worked with the Governor's office negotiating the wolf management plan for the state of Idaho. Commissioner Brandt said they were promised that if Idaho had an accepted management plan, the wolves would be delisted. He stated that now, the judicial system allows federal judges to legislate from the Bench. He said that Idaho County cannot take any more! The outfitters in Idaho County have no more business - they are done. Last year, Idaho County passed their wolf disaster declaration. He said it is now time for the state to step up - Idaho has to take action as we cannot wait any longer.

TESTIMONY: **Mr. Marshall Sage** represented himself. He said that he has a BS degree in biology, is a retired Lt. Col. from the Army, and retired from the investment banking profession. He said that he moved to Idaho in 1995 because of the hunting and fishing. Since the introduction of the wolf, he feels that hunting and fishing has gone downhill and he now does his hunting and fishing in North Dakota and Alaska. He stated that if people ask him if they should come to Idaho to hunt, he tells them to go elsewhere.

TESTIMONY: **Ms. Paula Bauer** asked permission to **read a letter from Keith Lunders**, Elk River, Idaho who was unable to attend. Inserted into the minutes is his letter and it is also on file.

Esteemed members of the Idaho Senate Resources and Environment Committee:

Regretting that due to a prior commitment I'm unable to attend the H 343 hearing on Idaho's wolf issues I first wish to express my gratitude to those responsible for this hearing for the opportunity to put my 2 cents worth on the record.

Because of the probability that you will hear a litany of horror stories about the non-native Wolf depredation that has devastated Idaho's elk herds, I'd like to focus my testimony on another aspect of Canadian wolf introduction that is seldom publicly discussed, namely the co-introduction of non-native parasites and diseases that the US Fish and Wildlife Service in general, and Mr. Ed Bangs in particular, were warned about by several eminent biologists, all of whom possess impeccable credentials and whose field service and research can be counted in decades.

The bottom line is. . .nobody involved in the wolf introduction decision can plead ignorance to the warnings of the havoc that non-native Canadian wolves would wreak on Idaho's game herds and traditional lifestyle, since the letters documenting both those warnings and warnings of disease/parasite infestation still exist. It's my humble request that the documentation** accompanying this letter and supporting the above allegations be entered into the public record by this committee.

My personal concern with the introduction of non-native diseases and parasites into Idaho's ecosystem stems from the fact that I live in a beautiful and semi-remote, but easily accessible part of the state that I have visited, camped, picnicked, fished, cut firewood, hiked, and hunted in since 1964, mostly without a care or worry that I or a family member could or would become part of the food chain. That's all changed and I will predict that the fantasy that "Wolves don't eat people" will sooner or later evaporate in Idaho like it long ago did everywhere else in the world that wolves and people co-exist.

But the really insidious factor in the introduction process that transcends the bounds of human decency is the failure of both the US Fish and Wildlife Service and the Idaho Fish and Game Dept. to warn Northwest residents of the between 30 and 50 diseases and parasites that were co-introduced with the wolves, the Echinococcus granulosis tapeworm, or Hydatid tapeworm as it more commonly known, being potentially the most deadly one that I am personally aware of to date. At any rate their decisions and actions have guaranteed that every generation from here on out will have to deal with introduced "diseases that could just as well have come from Jupiter for all the knowledge local citizens, vets, and physicians have of them."

My personal passion for accountability on the part of those who introduced this plague to my back yard stems from the knowledge that family, friends, uncountable numbers of visitors, and myself, have without warning been extensively exposed from about 1995 to the present to these potentially deadly parasites.

It's become even more personal for me since a recent CT scan revealed that I have a liver cyst, a surprising development in someone who doesn't drink, smoke, or eat junk food but who has in ignorance camped, hunted, berry picked, picnicked, and fished in areas containing dump truck loads of wolf scat. Anyone who recreates in any capacity around Elk River has likewise been exposed.

Until we quit taking our dogs to the woods they couldn't pass a pile without a good whiff or a roll in it, either of which acts virtually guarantees their contamination with Hydatid eggs. One can only imagine the massive exposure of ATV riders as machine after machine rims over dried scat piles on virtually every road around here, stirring literally millions of Hydatid eggs into the air for the following riders to filter out with their lungs. It's not rocket science to predict an unprecedented plague of Hydatid-related illnesses some 10 or 15 years down the road. Any idea who's going to pick up the medical costs?

In fairness to those who've unleashed this plague and thereby contributed to my personal exposure, it's an unknown at this time whether or not I owe this potentially serious medical issue to the wolves or some other cause. I have been in contact with Dr. Valerius Geist, a noted Canadian ungulate expert who has had extensive contact with wolves and who warned against Canadian wolf introduction to the lower 48, who advised me to contact the Aboriginal Health Clinic in Edmonton, Alberta, in order to get advice from a physician familiar with Hydatid issues, since American physicians are generally ignorant of this malady. To date all I've been able to talk with are nurses who have no hands-on experience but who are trying to put me in contact with a knowledgeable doctor.

Dr. Geist warned me to be very careful to avoid any kind of abdominal blow as a ruptured Hydatid cyst can release massive quantities of toxins that can kill within minutes. Additionally, survivors of a ruptured Hydatid cyst are virtually guaranteed an infestation of cysts colonizing their whole gut, since a ruptured cyst releases thousands of pieces of Hydatid "sand", each piece of which is capable of generating a new cyst.

By way of illustration of the extent of the ignorance of Hydatid issues, the nurse in my doctor's office turned white when I explained the Hydatid infestation to him, with he in turn explaining to me that he regularly picked up and crumbled dried wolf scat in his bare hands to see by the hair in it what the wolves were eating. Information readily available on the net will inform anyone interested that such action releases millions of microscopic tapeworm eggs that settle everywhere the breeze carries them, including your mouth, your lungs, on your clothes where they are carried back to your home and family, etc.

It is my sincere hope that the information you collect will lead to the passage of H 343 and that control of Idaho's wildlife will be returned to its proper repository, the citizens of Idaho.

Thank you; Keith Lunders

** The documentation accompanying this letter is on file.

TESTIMONY:

Next to testify was **Ms. Karen Calisterio** from Benewah County and she represented herself. Her testimony is inserted into the minutes.

Chairman Pearce, members of this committee, I thank you for the opportunity to speak to this issue here today.

Idaho is suffering a crisis of monumental proportions. As someone who has been directly impacted by the wolf crisis in Idaho, I urge you to support H 343.

Due to the introduction of the Canadian Gray Wolf in Idaho, my private property rights have been effectively abrogated along with my peace of mind and my right to life, liberty and the pursuit of happiness. The Canadian Gray Wolves have invaded my property and are a constant presence to the point that I am afraid to walk outside of my home, even if armed. I own 40 acres of which I can no longer enjoy and use for my own benefit. I cannot raise livestock, chickens or outdoor pets. If company comes to visit, they must keep their children in the house. The wooded area behind my house is a graveyard of deer and elk carcasses. Just a little over a week ago, nearly a dozen fresh, partially eaten carcasses were discovered. This is not an isolated incidence, it is a common sight. Last week, Canadian Gray Wolves were chasing deer in my yard. Three weeks ago a Canadian Gary Wolf was in my backyard after my dog. I hear them behind my home 2-3 nights a week, and see their carnage often.

These Canadian Gray Wolves are habituated and are extremely dangerous to humans. On Saturday, November 27th, for 18 long, horrifying minutes, I was trapped by 4 Canadian Gray Wolves in my driveway before help arrived. These wolves were not curious, they were not afraid. They were aggressive! They had plenty of open space to run off into all directions, yet they advanced on me as I was screaming for help on my cell phone. The paw prints of one of those wolves measured 4 1/2" x 7". I cannot begin to convey to you the horror of that event. To rightfully believe you are about to be ripped to shreds and eaten alive is something I would not wish on my worst enemy. I relive this event often in nightmares.

The Government's wolves, the public's wolves have free reign and control of my private property and I do not! The value of my property has been stripped away because of these resident predators that not only pose a direct danger through their aggressive habituated behavior, but they also carry the deadly hydatid disease, a disease in which a North Idaho man right now is suspected of contracting.

You must act now, you must act swiftly. People's lives are in grave danger. The people's safety rest squarely on your shoulders - right now -right here - please do the right thing! Thank you.

TESTIMONY: **Mr. Dan Loeffle** said that he was representing himself regarding this issue. He and a friend at one time were surrounded by wolves when they were hunting, but were able to get to their truck. Also, he use to have deer on his property, but since the wolves have moved in, there are no more deer. Mr. Loeffle stated that something has to be done as the wolves are getting more aggressive and are not afraid of anything.

TESTIMONY: **Mr. Michael Popp**, Idaho County, said that he is a spokesman for the **Committee for a Safe and Wolf Free Idaho**. He stated that current events prove that the wolf issue is an emergency. In the last few weeks, a neighbor of Mr. Popp's has lost four confirmed calves by wolves. On April 1, a sheriff's deputy in Elk City was awakened at 5:40 a.m. to see his dog, Lena, being killed by three Canadian gray wolves. Lena had seven puppies and was in the yard of the deputy.

Mr. Popp said that he admires all the officials in Boise on public safety issues; i.e., seat belts fastened, not driving under the influence, speed limits, stop lights, etc. In Idaho County, they live on the front lines and asked that the legislature address the economic issues, the wildlife of use issues, and the public safety issues.

TESTIMONY: **Ms. Suzanne Stone**, representing **Defenders of Wildlife**, spoke next. She has been working with wolves since 1988 and helped to bring the wolves back into Idaho in 1995 and 1996 and also felt it was an injustice that wolves were eradicated from the state. She has gone out at night and has been surrounded by wolves just to hear them howl. Ms. Stone said there are 700-800 wolves in the state today, along with 2,000-3,000 mountain lions and 20,000 black bears, and over 100,000 elk. People have always been able to protect themselves and wolves can be killed if they get into livestock - so it is not an emergency, stated Ms. Stone.

TESTIMONY: **Mr. Ron Gillette**, testifying for himself, lives in Stanley, one of the crown jewels of the American West. His grandfather herded sheep in that area and Mr. Gillette was an outfitter in the 1970s. The last few years, the elk have dropped off very rapidly. The normal amount would be 150-200 head of elk wintering on the north end of Stanley. This year, there were only 17 cows and one calf. He said it is unbelievable what the wolves have done to them.

Mr. Gillette said that he has sold his outfitting business and now has just 10 commercial cabins on his property that he and his wife depend on for their livelihood. For the last two summers, they have had many cancellations because people are afraid to take their children fishing or hiking, and the wolves are hurting their business, as well as other businesses in Stanley. For rural Idaho to survive economically, we must have a healthy and well-managed big game herds and something needs to be done about the wolves.

TESTIMONY: **Mr. Scott Rockholm**, said he wanted to address the issue of the safety of his home. He lives in Sandpoint, 12 miles north of town and said wolves are on his property every single day. He used to have 20-30 pair of cow/calf moose that wintered on his property every year - he only had 2-3 last year.

His aunt and uncle live next door and his three daughters cannot ride their bicycles down the road to their house. He has come face-to-face with wolves and he feels his hands are tied because of the laws. The wolves defecate in his yard that leaves a toxic substance, and he asked, how can he live with that? Mr. Rockholm said "an emergency" is the absolute understatement of the century!! He asked that the Committee "do them right."

TESTIMONY: **Mr. John Walters** said that he resides on the St. Joe River. In his area, there are high numbers of dead elk, and all you have to do is follow the ravens. He had a copy of the Environmental Impact Statement that was published by the federal government and he read one section regarding 15 issues of impacts. Those issues were not evaluated further because they were not significant to the decision being made – that being turning wolves loose in the state of Idaho. The main issue Mr. Walters emphasized was the "human health and safety issue."

TESTIMONY: **Mr. Ken Cole**, representing **Western Watersheds Project**, was next to testify. He said that he has had numerous experiences with wolves in various areas throughout the state, both rural and urban. Each Spring, he would be stationed near Clayton, (when he was employed by the Fish and Game), and his recreation was looking for wolves, which he found. He stated that at night, he would be on the ground, surrounded by wolves and never felt threatened. He said that he would howl to get the wolves to come to him, and they did, and would be as close as 10 yards away. Mr. Cole said the wolf situation is not an emergency.

TESTIMONY: **Mr. Gresham Bouma** read a letter from **David McGraw, Latah County Commissioner**, asking for support of passing H 343. Mr. Bouma then added his own comments, stating the impact on domestic animals, as well as the wildlife.

MOTION: **Senator Heider** made the **motion** to send H 343 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Tippetts**. A roll call vote was requested. Voting **aye** were Senators Tippetts, Heider, Brackett, Siddoway, Cameron, Vice Chairman Bair, and Chairman Pearce. Voting **nay** were Senators Werk and Stennett. The motion **passed** by a majority vote (7-2). **Chairman Pearce** will be the **sponsor**.

WRITTEN TESTIMONY: Due to time constraints (the Senate is reconvening at 3 P.M.), many people did not have the opportunity to testify. Submitting written testimony, which is on file, were the following:

John L. Runft, lawyer, Runft & Steele; (pro)
Hella McShane, Defenders of Wildlife; (con)
Billijo Beck, citizen; (pro)
Charles Lyon, President, Idaho Cattle Association; (pro)
Lynn M. Stuter, citizen; (pro)
Mike Paradis, Adams County Commissioner, member of Idaho State Wolf Compensation Committee;
Steve Alder, citizen; (pro)
Barry W. Cole, citizen; (pro)

Telephone calls:
Sandy Thomas, citizen; (pro)
Joyce Alder, citizen; (pro)

ADJOURN: **Chairman Pearce** apologized to the audience that testimony had to be limited, but was appreciative of the support of the majority of the public for this legislation. He then adjourned the meeting at 3:15 P.M.

Senator Pearce
Chairman

Juanita Budell
Secretary